

***United States Court of Appeals
for the Second Circuit***



APPENDIX

ORIGINAL
WITH PROOF
OF SERVICE

76-6047

UNITED STATES COURT OF APPEALS

for the

SECOND CIRCUIT

HEMPSTEAD BANK,

Plaintiff-Appellant,

-against-

JAMES E. SMITH, Comptroller of the
Currency of the United States and THE
CHASE MANHATTAN BANK, NATIONAL
ASSOCIATION,

Defendants-Appellees.

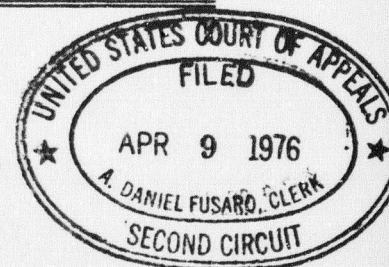
ON APPEAL FROM AN ORDER OF THE UNITED STATES
DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

APPENDIX

DALTON and HENoch
Attorneys for Plaintiff-Appellant
50 Clinton Street, Hempstead, New York 11550

PAUL J. CURRAN, United States Attorney
Attorney for Defendant-Appellee, Smith
U.S. Court House, Foley Square, New York, N. Y.

MILBANK, TWEED, HADLEY & McCLOY



PAGINATION AS IN ORIGINAL COPY

INDEX

	<u>PAGE</u>
DOCKET ENTRIES	A-1
COMPLAINT OF HEMPSTEAD BANK	A-4
ANSWER OF DEFENDANT, JAMES E. SMITH	A-12
ANSWER OF DEFENDANT, CHASE MANHATTAN BANK, N.A.	A-15
DEFENDANT, JAMES R. SMITH'S, NOTICE OF MOTION FOR SUMMARY JUDGMENT	A-17
AFFIDAVIT OF NATHANIEL L. GERBER, FOR DEFENDANT SMITH, IN SUPPORT OF MOTION	A-19
EXCERPTS FROM EXHIBIT A TO GERBER AFFIDAVIT - COMPTROLLER OF THE CURRENCY ADMINISTRATIVE FILE:	
APPROVAL AND NOTIFICATION	A-21
INVESTIGATION REPORT	A-26
LETTER DATED 10/1/74 OF DEPUTY COMPTROLLER OF CURRENCY DENYING NASSAU TRUST COMPANY'S REQUEST FOR A HEARING	A-40
LETTER DATED 9/23/74 FROM NASSAU TRUST COM- PANY APPEALING DENIAL OF HEARING BY REGIONAL ADMINISTRATOR	A-41
LETTER DATED 9/27/74 FROM NASSAU TRUST COM- PANY'S ATTORNEYS REQUESTING A HEARING	A-43
MEMO TO NASSAU TRUST COMPANY FROM ITS ATTORNEYS	A-44
WEEKLY BULLETIN, BANKING DEPARTMENT (8/16/74)	A-47
STATEMENT OF THOMAS BELLINGHAM	A-53

INDEX

	<u>PAGE</u>
LETTER TO EUGENE K. CURRY (9/5/74) FROM REGIONAL ADMINISTRATOR DENYING NASSAU TRUST COMPANY'S REQUEST FOR A HEARING	A-55
LETTER TO PHILIP C. KILIAN (9/5/74) FROM REGIONAL ADMINISTRATOR DENYING NASSAU TRUST COMPANY'S REQUEST FOR A HEARING	A-56
ACKNOWLEDGMENT OF HEMPSTEAD BANK'S OBJECTION TO APPLICATION (9/28/74)	A-57
LETTER DATED 9/27/74 FROM NASSAU TRUST COMPANY'S ATTORNEYS REQUESTING A HEARING	A-58
LETTER DATED 8/22/74 WITH EXHIBITS FROM HEMPSTEAD BANK OBJECTING TO APPLICATION	A-59
DEPOSIT MEMORANDUM	A-64
LETTER OF 8/15/74 FROM CHASE MANHATTAN RE: LEGAL NOTICE OF APPLICATION	A-65
LETTER OF REGIONAL ADMINISTRATOR (8/7/74) ACKNOWLEDGING RECEIPT OF APPLICATION	A-68
APPLICATION	A-69
MARKET ANALYSIS IN SUPPORT OF APPLICATION	A-74
AREA MAP	A-95
STATEMENT OF MATERIAL FACTS AS TO WHICH THERE IS NO GENUINE ISSUE (7/10/75) SUBMITTED BY U.S. ATTORNEY IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT	A-98
DEFENDANT, CHASE MANHATTAN BANK'S, NOTICE OF MOTION FOR SUMMARY JUDGMENT	A-105
AFFIDAVIT OF ANDREW J. CONNICK, FOR DEFENDANT CHASE MANHATTAN BANK, IN SUPPORT OF MOTIONS	A-107

INDEX

	<u>PAGE</u>
PLAINTIFF, HEMPSTEAD BANK'S, NOTICE OF CROSS-MOTION FOR SUMMARY JUDGMENT	A-109
AFFIDAVIT OF GILBERT HENOCHE, FOR PLAINTIFF, IN SUPPORT OF CROSS-MOTION AND IN OPPOSITION TO MOTIONS	A-111
AFFIDAVIT OF CURTIS F. VELSOR, FOR PLAINTIFF, IN SUPPORT OF CROSS-MOTION AND IN OPPOSITION TO MOTIONS	A-116
AFFIDAVIT OF IVAN LEVINE, FOR PLAINTIFF, IN SUPPORT OF CROSS-MOTION AND IN OPPOSITION TO MOTIONS	A-119
EXHIBIT "A" TO CROSS-MOTION - CALCULATION OF POPULATION BASED ON 1970 CENSUS	A-122
OPINION AND ORDER OF JUDGE L. F. MacMAHON APPEALED FROM	A-125
NOTICE OF APPEAL	A-135

DOCKET ENTRIES

DIST/OFFICE	DOCKET		FILING DATE			J	N/S	O	R	R 23	S	DEMAND		JUDGE NUMBER	JURY DEM.	DOCKET	
	YR.	NUMBER	MO.	DAY	YEAR							OTHER	NUMBER			YR.	NUMBER
208-1	75	0171	01	14	75		430	1				Injunctive relief Sought	0834			75	0171
																75	0171

PLAINTIFFS

DEFENDANTS J. MAC MAHON

HEMPSTEAD BANK

JAMES E. SMITH, Comptroller of the
Currency of the United States and
THE CHASE MANHATTAN BANK (National
Association)

CAUSE

MW

To Enjoin Deft. Chase Mahattan Bank from
transacting Banking Buissiness or Construction
of any structure at Designated Locale.

ATTORNEYS

DALTON & HENCOCH
50 Clinton Street
Hempstead, N.Y. 11550
IV 6-6600

~~Milbank~~ Tweed Hadley & McCloy
1 Chase Manhattan Plaza, NYC 10005
422-2660

☐ CHECK
HERE
IF CASE WAS
FILED IN
FORMA
PAUPERIS

FILING FEES PAID

DATE
JAN 14 1975

RECEIPT NUMBER

45428

C.D. NUMBER

STATISTICAL CARDS

CARD

DATE MAILED

JS-5

JS-6

✓

DOCKET ENTRIES

75 Civ 171 HEMPSTEAD BANK Vs. JAMES E. SMITH, et al

Page #1

JUDGE MAC MAHON

DATE	NR.	PROCEEDINGS
11-14-75		Filed Complaint and Issued Summons.
1-29-75		Filed Marshal's return on summons return. Served: James E. Smith by Mr. Nathana on 1-16-75 and to U.S. Atty Gen. Wash. D.C. by certified mail. Receipt #161907 and also served P. Troia.
02-03-75		Filed summons & Marshal's return. Served: Chase Manhattan Bank By: Mrs. H. Hoffman 1-23-75
02-14-75		Filed ANSWER to the complt by deft.
03-26-75		Filed Stip & Order extending to 5-19-75 for deft U.S.A. to move or answer the complt.....MAC MAHON, J
05-14-75		Filed ANSWER to complt by deft. USA
9-11-75		Filed deft (Smith) affdvt & notice of motion to dismiss the complt & for summary judgment. Ret. 7-25-75
9-11-75		Filed deft (Smith) memo in support of motion to dismiss, or for summary judgment.
7-17-75		Filed defts affdvt & notice of motion for summary judgment dismissing the complt. Ret. 7-25-75.
7-29-75		Filed Stip & Order that motions of both defts to dismiss the complt & for summary judgment be adjourned to 8-15-75.....MAC MAHON, J
8-20-75		Filed Stip & Order extending to 8-22-75 for pluff to respond to defts motion for dismissal, & to 9-19-75 for deft to reply....MAC MAHON, J
8-22-75		Filed plttfs affdvt & notice of motion for summary judgment. Ret. 9-19.
8-22-75		Filed plttfs memo in support of cross-motion for summary judgment & in opposition to defts motion to dismiss.
9-15-75		File Defts' memo in opporition to plttf's motion for summ judg and in support of defts' motion for summ judg.
2-5-76		Fld Memo End on bk of motion fld 8-22-75..See opinion of this date..MacMahon, J.
2-5-76		Fld Opinion #43838....Accordingly....defts' motions for summ judg dismissing the action are granted in all respects. Plttf's cross-motion for summ judg against the defts is denied in all respects..So Ordered..MacMahon, J. mn
2-5-76		Fld Memo End on bk of motion fld 7-17-75..See Opinion of this date...

DOCKET ENTRIES

75 Civ 171 NORTHEAST BANK -v- JAMES E. SMITH, et ano

MAC MAHON..

Page #2

D. C. 110 Rev. Civil Docket Continuation

[illegible]

COMPLAINT OF HEMPSTEAD BANK

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
HEMPSTEAD BANK,

Plaintiff,

-against-

JAMES E. SMITH, Comptroller of the
Currency of the United States and
THE CHASE MANHATTAN BANK (National
Association),

C O M P L A I N T

Defendants

-----X

Plaintiff, by its attorneys, brings this
action against defendants and complains as follows:

I. JURISDICTION

1. This action arises under 5 U.S.C. §704, 706
and 12 U.S.C. §36. This Court's jurisdiction is based on
5 U.S.C. §703, 28 U.S.C. §1331, 1346 and 2201. The amount in
controversy exceeds, exclusive of interest and costs, the sum of
\$10,000. Venue is based on 28 U.S.C. §1391.

II. THE PLAINTIFF

2. The plaintiff is a banking corporation chartered
under the Laws of the State of New York, in 1887. Through its
main office in Hempstead, New York, and branch offices located
in Nassau and Suffolk Counties, New York, plaintiff is engaged
in the banking business. It has a large investment in capital

COMPLAINT OF HEMPSTEAD BANK

plaintiff had assets of \$206, 180, 401.94.

III. THE DEFENDANTS

3. The defendant JAMES E. SMITH is and was at all times relevant hereto, the Comptroller of the Currency, a duly constituted officer of the Executive Branch of the United States Government and an "agency" of the said Government within the meaning of Title 5 , United States Code Section 701.

4. The defendant, The CHASE MANHATTAN BANK (National Association) (hereinafter called "CHASE"), is a national banking corporation organized under Title 12 United States Code, with its principal offices at 1 Chase Manhattan Plaza, New York, N Y.

IV. THE BRANCH APPLICATION

5. On or about August 6, 1974, CHASE applied to the defendant Comptroller of the Currency for permission to establish a branch banking office at Birch Hill Road, Locust Valley, New York, less than one mile from plaintiff's existing branch office.

6. On or about August 22, 1974, the plaintiff filed written objections to the aforesaid application with CHARLES M. VAN HORN, Regional Administrator of National Banks.

7. On or about October 18, 1974, plaintiff received

COMPLAINT OF HEMPSTEAD BANK

notice in the weekly bulletin of the Regional Administrator that the application of CHASE for such branch office had been approved on October 8, 1974.

8. CHASE has not yet commenced construction or operation of any banking facility at this location.

V. THE LOCATION

9. Locust Valley is a compact unincorporated hamlet in the Township of Oyster Bay, New York, consisting of a small business area of two to three dozen business establishments and a surrounding residential area with a total population as shown in the 1970 census of less than 4,000 persons.

10. Three banks already maintain branch offices in Locust Valley, to wit: two commercial banks--the plaintiff, Hempstead Bank--and another, Nassau Trust Company, both on Forest Avenue, 0.28 miles and 0.48 miles south respectively; and a savings bank,--Prudential Savings Bank, located on Birch Hill Road, .05 miles north of the proposed branch.

VI. THE STATUTORY BACKGROUND

11. Sec. 36 (c) of the National Bank Act, Rev. Stats. Sec. 5155, as amended (12 U.S.C. § 36), provides that:

"(c) A national banking association may, with the approval of the Comptroller of the Currency, establish and operate new branches...(2) at any point within the State in which said Association is situated, if such establishment and operation are at the time authorized to State banks by the statute law of the

COMPLAINT OF HEMPSTEAD BANK

State in question by language specifically granting such authority affirmatively and not merely by implication or recognition, and subject to the restrictions as to location imposed by the law of the State on State Banks."

12. The law of the State of New York restricts the establishment of branch banking offices. The relevant portion of the New York Banking Law (§ 29) provides:

"The Banking Board by general regulation may delegate to the Superintendent authority to approve applications by banks...to open branch offices...pursuant to such standards as the Board by general regulation may establish".

13. The Banking Board has adopted general regulations implementing this statute. Sec. 29.1 of the General Regulations of the Banking Board provides in part:

"The Banking Board hereby authorizes the incumbent superintendent, for the period ending December 31, 1974, to approve applications of banks and trust companies to open branch offices within the corporate limits of any city in the State of New York with a population in excess of 75,000 without submitting such applications to the Banking Board.

(a) Service area and population. In acting upon bank and trust company branch applications, the superintendent shall give consideration to the character and extent of the area to be served by the proposed branch. Normally there should be a population of 5,000 persons per commercial bank facility within a reasonably defined service area... In service areas of above average income or in service areas consisting primarily of working population, a reduction in the population requirement stated above shall be permitted. In residential service areas of lower than average income, a higher population shall be required."
(emphasis supplied)

COMPLAINT OF HEMPSTEAD BANK

14. Under the above cited provisions of the New York Banking Law and the General Regulations of the Banking Board, a branch office would not be allowed at the proposed location since :

(a) the actual population residing in the area which can be reasonably expected to be served by a branch office at this location is, in fact, less than 10,000 people;

(b) there are already three other banks servicing this same service area;

(c) the composition of the population of this service area does not justify any relaxation of the normal standards employed by the New York banking authorities, to wit:

"Normally, there should be a population of 5,000 persons per commercial bank facility". (Gen. Reg. Sec. 29.1, supra)

(d) the area does not qualify as an area of "above average income"; while certain portions of the service area are improved with large homes on over sized plots, a considerable portion of the service area is improved with modest residences on small building plots and mixed business and residential construction. The median income of the immediate service area of Locust Valley is \$13,000 per family--less in fact, than the median income of families in Nassau County.

COMPLAINT OF HEMPSTEAD BANK

15. A Certificate of Authority to a national bank authorizing it to open a new branch at a location where a branch would not be allowed to ~~state~~ banks is an unlawful grant under Sec. 36 (c) of the National Bank Act (12 U.S.C. Sec. 36(c)) and constitutes action which is "arbitrary, capricious and an abuse of discretion" within the meaning of the Administrative Procedure Act, 5 U.S. C. §706.

16. The decision of the Comptroller of the Currency was furthermore arbitrary, capricious and an abuse of discretion in that:

(a) upon information and belief CHASE presented no evidence that it would make available banking services to residents of the service area not already provided by the existing banks;

(b) commercial establishments in the area have no need of international banking services or other specialized banking services not already available to them by the existing banks;

(c) any need of the residents of the area for trust services is, upon information and belief, already furnished through New York City banks to residents of the area who are employed in New York City;

(d) deposits of the existing banks in the area have been static in recent years and have not exhibited any

COMPLAINT OF HEMPSTEAD BANK

growth trend; thus, there was no evidence to support the contention of CHASE that this branch would become profitable; any deposits generated by CHASE at this branch office in coming years would be solely at the expense of the other already existing banks;

(e) there is no potential for growth in this area. There are no open tracts of land within the service area which are either being developed for residential use or available for such development. The urban portions of Locust Valley are thoroughly improved. The more rural portions of Locust Valley, Matinecock and Lattingtown are zoned for residential use requiring a minimum plot size of two (2) acres. Residential development in Mill Neck requires a minimum lot size of five (5) acres. Thus any growth in this area could only be expected to be piecemeal and sporadic;

(f) There is already substantial competition between existing banks in the immediate service area and in the surrounding communities of Glen Cove, Oyster Bay and Bayville, even without establishment of this additional banking office.

VII. PRAYER FOR RELIEF

WHEREFORE, plaintiff prays:

1. That the Court declare the action of the Comptroller of the Currency in approving the branch application of THE CHASE MANHATTAN BANK, N.A., at this aforesaid location

COMPLAINT OF HEMPSTEAD BANK

to have been made in contravention of law and to be null and void;

2. That the Court in the interim, enjoin CHASE MANHATTAN BANK N.A. from proceeding to transact any banking business at this location or from constructing any structure at this location for such purpose; and

3. That the Court grant plaintiff such other and further relief as may be just and proper.

DALTON & HENOCK

By: 

Gilbert Henoch

50 Clinton Street,
Hempstead, New York, 11550
Attorneys for Plaintiff,

ANSWER OF DEFENDANT JAMES E. SMITH
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x

HEMPSTEAD BANK, :

Plaintiff, :

-v- : ANSWER

JAMES E. SMITH, : 75 Civ. 171 (L.F.M.)

Comptroller of the Currency
of the United States, et al., :

Defendants. :

-----x

The defendant, James E. Smith, Comptroller of the
Currency of the United States, by his attorney, Paul J.
Curran, United States Attorney for the Southern District of
New York for his answer to the complaint:

1. Denies the averments set forth in paragraph 1
of the complaint except admits that the action is purportedly
brought pursuant to 5 U.S.C. §§704, 706 and 12 U.S.C. §36,
that jurisdiction is purportedly based on 5 U.S.C. §703 and
28 U.S.C. §§1331, 1346 and 2201, and that venue is purported-
ly based on 28 U.S.C. §1391.

2. Denies knowledge or information sufficient to
form a belief as to the truth of the averments set forth in
paragraph 2 of the complaint.

3. Admits the averments set forth in paragraphs 3,
4, 5 and 6 of the complaint.

4. Denies knowledge or information sufficient to
form a belief as to the truth of the averments set forth in
paragraphs 7 and 8 of the complaint.

5. Denies the averments set forth in paragraph 9
of the complaint.

6. Admits the averments set forth in paragraph 10

ANSWER OF DEFENDANT, JAMES E. SMITH

7. Denies the averments set forth in paragraphs 11, 12 and 13 of the complaint except admits the existence of the various statutes and regulations cited therein and refers thereto for a complete and accurate statement of their provisions.

8. Denies the averments set forth in paragraphs 14, 15 and 16 of the complaint.

AS AND FOR A FIRST COMPLETE
AFFIRMATIVE DEFENSE

9. The Court lacks jurisdiction over the person of defendant James E. Smith, Comptroller of the Currency of the United States.

AS AND FOR A SECOND COMPLETE
AFFIRMATIVE DEFENSE

10. The Court lacks jurisdiction over the person of defendant James E. Smith, Comptroller of the Currency of the United States on the ground that he has not been properly served in this action.

AS AND FOR A THIRD COMPLETE
AFFIRMATIVE DEFENSE

11. The complaint fails to state a claim upon which relief can be granted.

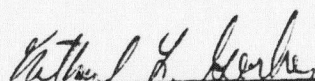
WHEREFORE, defendant James E. Smith, Comptroller of the Currency of the United States, demands judgment dismissing this action in its entirety, together with the costs and disbursements of this action and such other and further relief as is just.

Dated: New York, New York

May 13, 1975

PAUL J. CURRAN
United States Attorney for the
Southern District of New York
Attorney for Defendant
United States of America

By:


NATHANIEL L. GERBER
Assistant United States Attorney
Office: Post Office Address:

A-14

ANSWER OF DEFENDANT, JAMES E. SMITH

TO: GILBERT HENOCK, ESQ.
Dalton & Henoch
50 Clinton Street
Hempstead, New York 11550

ANDREW J. CONNICK, ESQ.
MILBANK, TWEED, HADLEY & McCLOY
1 Chase Manhattan Plaza
New York, New York 10005

ANSWER OF DEFENDANT, CHASE MANHATTAN BANK, N.A.
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- - - - -x

HEMPSTEAD BANK,

Plaintiff,

-against-

JAMES E. SMITH, Comptroller of the
Currency of the United States and
THE CHASE MANHATTAN BANK (NATIONAL
ASSOCIATION),

Defendants.

- - - - -x

75 Civ. 171 (L.F.M.)

ANSWER

Defendant THE CHASE MANHATTAN BANK, NATIONAL ASSOCIATION
("Chase") by its attorneys, Milbank, Tweed, Hadley & McCloy,
for answer to the complaint:

1. Denies the allegations contained in paragraph 1,
except admits that the action is purportedly brought pursuant to
5 U.S.C. §§ 704, 706 and 12 U.S.C. § 36, that jurisdiction is
purportedly based on 5 U.S.C. § 703 and 28 U.S.C. §§ 1331, 1346
and 2201, and that venue is purportedly based on 28 U.S.C. § 1391.

2. Denies knowledge or information sufficient to form
a belief as to the truth of the allegations contained in
paragraph 2.

3. Denies the allegations contained in paragraph 4,
except admits that Chase is a national banking association
organized and existing under the National Bank Act (12 U.S.C.
§§ 21 et seq.) and that Chase's principal office is at 1 Chase
Manhattan Plaza, New York, N.Y.

4. Denies knowledge or information sufficient to form
a belief as to the truth of the allegations contained in
paragraphs 6 and 7.

ANSWER OF DEFENDANT, CHASE MANHATTAN BANK, N.A.

5. Denies the allegations contained in paragraph 9, except admits that Locust Valley is an unincorporated area which includes a business district with approximately 30 retail stores.

6. Denies the allegations contained in paragraphs 11, 12 and 13, except admits the existence of the various statutes and regulations cited therein and refers thereto for a complete and accurate statement of their provisions.

7. Denies the allegations contained in paragraphs 14, 15 and 16.

WHEREFORE, Chase demands judgment dismissing the complaint, with costs.

Dated: New York, N.Y.
February 13, 1975

MILBANK, TWEED, HADLEY & McCLOY

By /s/ Andrew J Connick
A Member of the Firm
1 Chase Manhattan Plaza
New York, N.Y. 10005
Attorneys for defendant
The Chase Manhattan Bank, N.A.

DEFENDANT, JAMES R. SMITH'S, NOTICE OF MOTION FOR
SUMMARY JUDGMENT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

HEMPSTEAD BANK,

Plaintiff,

- v -

JAMES E. SMITH,
Comptroller of the Currency
of the United States and
THE CHASE MANHATTAN BANK,
NATIONAL ASSOCIATION,

Defendants.

NOTICE OF MOTION

75 Civ. 171 (LFM)

SIRS:

PLEASE TAKE NOTICE that upon defendant Smith's Rule 9(g) Statement and the affidavit of Assistant United States Attorney, Nathaniel L. Gerber which are annexed hereto and upon all prior proceedings, defendant James E. Smith, Comptroller of the Currency of the United States, will move this Court in Room 519 on July 25, 1975 in the United States Courthouse, Foley Square, New York, New York at 2:15 o'clock in the afternoon for: 1) and order pursuant to Rules 12(b)(2) and(5) of the Federal Rules of Civil Procedure dismissing the complaint as to him on the ground that this Court lacks personal jurisdiction; 2) an order pursuant to Rule 56 of said Rules granting summary judgment in favor of the Comptroller on the ground that there is no genuine issue as to any material fact; and 3) such other and further relief as is just.

A-18

DEFENDANT, JAMES R. SMITH'S, NOTICE OF MOTION FOR
SUMMARY JUDGMENT

Dated: New York, New York

July 11, 1975.

Yours, etc.

PAUL J. CURRAN
United States Attorney for the
Southern District of New York
Attorney for the Comptroller

By: 

NATHANIEL L. GERBER
Assistant United States Attorney
Office and Post Office Address:
United States Courthouse Annex
One St. Andrew's Plaza
New York, New York 10007

TO: GILBERT HENOCK, ESQ.
DALTON & HENOCK
50 Clinton Street
Hempstead, N.Y. 11550

ANDREW J. CONNICK, ESQ.
MILBANK, TWEED, HADLEY & McCLOY
1 Chase Manhattan Plaza
New York, New York 10005

75-0167
M-437

AFFIDAVIT OF NATHANIEL L. GERBER, FOR DEFENDANT
SMITH, IN SUPPORT OF MOTION
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X

HEMPSTEAD BANK, :

Plaintiff, :

- v - :

AFFIDAVIT.

JAMES E. SMITH, :
Comptroller of the Currency :
of the United States and :
THE CHASE MANHATTAN BANK, :
NATIONAL ASSOCIATION, :

75 Civ. 171 (LFM)

Defendants. :

-----X

STATE OF NEW YORK)
COUNTY OF NEW YORK : ss.:
SOUTHERN DISTRICT OF NEW YORK :

NATHANIEL L. GERBER, being duly sworn, deposes and
says:

1. I am an Assistant United States Attorney in
the office of Paul J. Curran, United States Attorney for the
Southern District of New York, Attorney for defendant James
E. Smith, Comptroller of the Currency of the United States
(the "Comptroller"), and in that capacity I am in charge of
his defense of this action. I submit this affidavit in
support of the Comptroller's motion for an order dismissing
the complaint herein and in the alternative for an order
granting summary judgment in his favor.


2. On October 8, 1974 the Comptroller approved
the application of The Chase Manhattan Bank, National Assoc-
iation, a co-defendant herein, to establish a branch bank at
Birch Hill Road, Locust Valley, New York. Annexed hereto as
Exhibit A is a certified copy of the true and complete
records of the Comptroller regarding the aforementioned

AFFIDAVIT OF NATHANIEL L. GERBER, FOR DEFENDANT
SMITH, IN SUPPORT OF MOTION

NLG:ow
75-0167
M-437

3. The Administrative Record contained in Exhibit A demonstrates that in passing on the aforementioned application, the Comptroller fully considered all the relevant factors required by the National Bank Act, 12 U.S.C. §36, and that his decision was rational and in accordance with law.

WHEREFORE, it is respectfully requested that the Comptroller's motions for dismissal of the complaint and in the alternative for summary judgment be granted together with such other and further relief as is just.

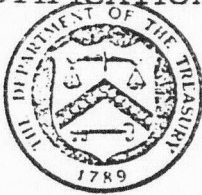


NATHANIEL L. GERBER
Assistant United States Attorney

Sworn to before me this
day of July, 1975.

WALTER G. BRANNON
Notary Public, State of New York
No. 24-0394500
Qualified in Kings County
Cert. filed in New York County
Term Expires March 30, 1977

EXCERPT FROM EXHIBIT A TO GERBER AFFIDAVIT - COMPTROLLER
OF THE CURRENCY ADMINISTRATIVE FILE--APPROVAL AND
NOTIFICATION



THE ADMINISTRATOR OF NATIONAL BANKS

WASHINGTON, D.C. 20220

October 10, 1974

Office of the
Comptroller of the Currency

Mr. Francis N. Collura, Jr.
Second Vice President
The Chase Manhattan Bank
(National Association)
1 Chase Manhattan Plaza
New York, New York 10015

Dear Mr. Collura:

We have approved the bank's application to establish a branch at the East side of Birch Hill Road between Lindberg & Davis Streets, Locust Valley, Nassau County, New York.

This approval is granted with the understanding that the branch will be opened within twelve months from this date. This approval shall automatically terminate at that time unless prior thereto the expiration date has been extended by the Regional Office. If this branch cannot be established within the time specified you should submit to your Regional Administrator of National Banks, sixty days before the expiration of this approval, a written application for an extension of time, setting forth in detail the factors causing the delay and justifying the requested extension.

Please advise this Office two weeks in advance of the definite date on which the branch will be established and furnish us with its exact address, including street number, and the popular name by which it will be known. The Comptroller's certificate authorizing its establishment will be issued when that information has been received. In no event should the branch be opened for business until you are informed that the necessary certificate of authority has been issued by the Comptroller.

Very truly yours,

JOHN D. COHEN

Deputy Comptroller of the Currency

Approved: 10/8/74
ns: #2



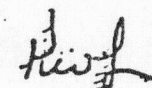

United States Treasury

A-22

EXCERPT FROM EXHIBIT A TO GERBER AFFIDAVIT - COMPTROLLER
OF THE CURRENCY ADMINISTRATIVE FILE--APPROVAL AND
NOTIFICATION

APPLICATION OF "The Chase Manhattan Bank(National Association)"New York, N.Y.

To establish a branch at East side of Birch Hill Road btwn Lindberg & Davis
Streets, Locust Valley, New York

	<u>Date</u>	<u>Approve</u>	<u>Reject</u>
Regional Administrator.....	9-10-74	✓	
Director, Bank Organization Division...	9-26-74		
Chief National Bank Examiner.....	9-27-74		
Deputy Comptroller.....			
Deputy Comptroller.....	9-27-74		
Special Assistant.....			

(Please initial in the appropriate column.)

EXCERPT FROM EXHIBIT A TO GERBER AFFIDAVIT - COMPTROLLER
OF THE CURRENCY ADMINISTRATIVE FILE--APPROVAL AND
NOTIFICATION

Form CC-1930-OX Pa.
Revised March 1971
UNITED STATES TREASURY
COMPTROLLER OF THE CURRENCY

Charter No. 2370

SUPPLEMENTAL INFORMATION
DEVELOPED IN RELATION TO AN
APPLICATION FILED BY

"The Chase Manhattan Bank
(National Association)"

(Bank)

New York

(City)

New York

(County)

New York

(State)

TO ESTABLISH A BRANCH TO BE LOCATED AT

East side of Birch Hill Road

between Lindberg and Davis Streets

(Street Address)

Locust Valley

(City)

Nassau

(County)

New York

(State)

Primary

Application filed with Comptroller dated August 7, 1974

~~XXXXXX~~

Date Briefed September 19, 1974

Date(s) Investigation made August 26 and 27, 1974

SUMMARY

1. Number of existing branches (Local) 176
..... (Outside) 37

(a) Approved but not opened: (Local) 12
(Outside) 5

(b) Applications pending: (Local) 1
(Outside) 2

2. Legality—Capital, State Law, etc.

Capital and surplus sufficient to meet requirements of
both State law and Federal statutes. ✓

3. Letters of protest:

See pink sheet on left hand side of folder

4. Comment on any conflicting bank or branch applications:

None known

EXCERPT FROM EXHIBIT A TO GERBER AFFIDAVIT - COMPTROLLER
OF THE CURRENCY ADMINISTRATIVE FILE--APPROVAL AND
NOTIFICATION

Form CC-1930-0X Pa

Revised March 1971

UNITED STATES TREASURY
COMPTROLLER OF THE CURRENCY

"The Chase Manhattan Bank(National Association)"New York, N.Y.
(Bank) (Branch Location)

RECOMMENDATIONS

Comments (Condensed):

FAVORABLE-UNFAVORABLE

FAVORABLE -

Establishment of branch would add competitive factor to area:
Would enable bank to extend its facilities into area not
currently serviced by applicant.

UNFAVORABLE -

Affluence of area would seem to indicate that it can support
proposed branch without causing greatly adverse conditions.
Future growth of area would seem to be minimal.

SUMMARY -

It is recommended that application be approved.

Eddy L. Milstein

National Bank Examiner

Condition of Bank is fair. Last examination, 9/4/73,
classified assets represented 33.7% of gross capital
funds with other assets especially mentioned
representing additional 28.6% of gross capital funds.
Management is competent and earnings are good.
Capital is marginal with loans at 8.3 times gross
capital funds.

Mr. Van Horn concurs with findings of investigating
examiner.

It is recommended that application be approved.

C. M. Van Horn

Regional Comptroller of the Currency

NONE

Comments of State Banking Department

EXCERPT FROM EXHIBIT A TO GERBER AFFIDAVIT - COMPTROLLER
OF THE CURRENCY ADMINISTRATIVE FILE--APPROVAL AND
NOTIFICATION

Form CC-1930-0X Pa,
Revised March 197
UNITED STATES TREASURY
COMPTROLLER OF THE CURRENCY

RECOMMENDATIONS

"The Chase Manhattan Bank (National Association)"

Bank or Branch

REASONS:

East side of Birch Hill Road btwn
Lindberg & Davis Streets, Locust Valley
Location New York

A high quality residential area that can support added competition.

FAVORABLE

Conclusion

T. M. Brezinski
Director, Bank Organization Division

9/26/74

Date

REASONS:

Conclusion

Date

REASONS:

This is a lucrative market in which applicant is not represented. Houses for the most part are single family and of quality construction. Entry will stimulate competition and can be supported by available business.

FAVORABLE

Conclusion

R. J. Blanchard
Deputy Comptroller of the Currency

10/1/74

Date

UNFULFILLED COMMITMENTS: (For Informal or Public Hearings)

NOTIFICATION-COMMITMENTS (See Pink Sheet)

COMPTROLLER'S DECISION

Approved

Date

10-8-74

ns:#2

Reject

Date

Hold

Date

Special Instructions-Conditions

EXCERPT FROM EXHIBIT A TO GERBER AFFIDAVIT - COMPTROLLER
OF THE CURRENCY ADMINISTRATIVE FILE--INVESTIGATION REPORT

Form 20 (10-64) Page 1
2-24-70 1-7-70
UNITED STATES TREASURY
COMPTROLLER OF THE CURRENCY

Name of Examiner Eddy L. Milstein National Bank Region 4
Dates investigation made August 26 and 27, 1974 Charter No. 2370

REPORT OF INVESTIGATION OF A BRANCH APPLICATION FILED BY

The Chase Manhattan Bank (National Association) New York New York New York
(Street and Address) (City) (County) (State)

FOR PERMISSION TO ESTABLISH A BRANCH TO BE LOCATED AT

East side of Birch Hill Road
between Lindberg and Davis Streets Locust Valley Nassau
(Street and Address) (City) (County) (State)



A. Capital Structure: (Latest figures— June 30, 1974 ~~XXXXXX~~ call report) Capital Deb. 144,985M
Capital
(a) Total deposits \$ 35,156,258M Preferred
Common 536,275M
(b) Total loans \$ 24,955,043M Surplus 708,997M
Profits 429,923M
Reserves 2,925M
Bad Debt and
Valuation
Reserves 330,490M
Total 2,153,595M
(c) Total assets \$ 42,495,393M
B. Population of Head Office City 1960 Census 7,781,984
1970 Census 7,895,563
present estimate 7,847,100
C. Population of City, Town, County, Village or Municipality in which the proposed branch is to be located 1960 Census 3,321
1970 Census 3,932
present estimate 4,043
D. Estimate population of the service area of proposed branch 1960 8,600
1970 9,950
present 10,150
E. This area extends from the branch located approximately 1.9 miles north; 1.7 miles east; 1.7 miles south and .6 miles west.

A map (with a scale of miles and compass points) of the city or area appropriately labeled to show the location of the proposed branch and the names and locations of all banks and branches, including applications pending and those approved but not opened should be submitted with the report. Aerial photographs of reasonable coverage, including expected service area are helpful, and if available, one so labeled should be submitted. The expected service area of the proposed branch should be clearly outlined on the map and on aerial photographs.

All dollar figures should be shown to the nearest thousand (Use M Symbol).

EXCERPT FROM EXHIBIT A TO GERBER AFFIDAVIT - COMPTROLLER
OF THE CURRENCY ADMINISTRATIVE FILE--INVESTIGATION REPORT

Form CC-1930-OX Page
CM Revised March 1971
UNITED STATES TREASURY
COMPTROLLER OF THE CURRENCY

C. No. 2370

CAPACITY OF APPLICANT BANK TO ACCOMMODATE BRANCH EXPANSION

1. Will the bank's common capital stock and surplus meet the legal requirement for the proposed branch in addition to the requirement for its pending, existing, and approved but not opened branches, if any? If not, state in detail bank's plans for increasing its capital to meet the legal requirement.

Yes

2. Under the branch banking laws of the State, may the applying bank legally establish a branch at the location proposed? (If there is any question as to legality, an opinion of bank's counsel should be obtained.)

Yes

3. Does State law limit branch powers? If so, list functions permitted.

No

Answers to the above three questions made by Eddy L. Milstein
~~Regional Administrator~~ Examiner). If the examiner is not fully familiar with the Head Office, these questions should be answered by the Regional or Deputy Regional Administrator.

EXCERPT FROM EXHIBIT A TO GERBER AFFIDAVIT - COMPTROLLER
OF THE CURRENCY ADMINISTRATIVE FILE--INVESTIGATION REPORT

Form CO-1070-0X Page 3
CM Revised March 1971
UNITED STATES TREASURY
COMPTROLLER OF THE CURRENCY

Case No. 2370

PROPOSED BRANCH

What types of banking service will the proposed branch offer and what major types of demands for loans is it expected to serve? Will it relieve overcrowded lobby or working conditions in the Head Office or certain branches or serve as an adjunct to any such office or branches? Discuss fully so as to indicate clearly the reasons the applicant desires to establish the proposed branch.

The proposed branch will be full service and will include safe deposit and drive-in facilities. Applicant anticipates that the major types of loan demand will be in the areas of home mortgage and instalment loans. The proposed branch is not intended to relieve overcrowded conditions at other branches or at the Head Office. It is intended to provide banking services to an area not presently serviced by the applicant.

2. Distance and geographical direction of the Head Office from proposed branch.

29.0 miles southwest.

3. Provide the following information with respect to other branches of the applicant bank located within service area of the proposed branch. Describe geographical barriers, if any.

† Map number and
names and addresses

Date established if
within three years

Distance by road
mileage and
direction from
proposed branch.

Applicant has no other offices within the service area, Nearest office is:

Roslyn Office
49 Bryant Avenue
Roslyn, New York

Apr-11-72

7.9 miles SW.

4. Provide the following information with respect to competitive bank and branches located within the service area of the proposed branch.

If nonpar, so indicate.

† Map number and
names and addresses

Date established if
within three years

Distance by road
mileage and direction
from proposed branch.

HEMPSTEAD BANK
HEMPSTEAD, NEW YORK

Matinecock Office
63 Forest Avenue
Locust Valley, New York

.3 miles S

Oak Neck Office
74 Bayville Avenue
Bayville Village, New York

2.7 miles NE

NASSAU TRUST COMPANY
GLEN COVE, NEW YORK

Locust Valley Branch
147 Forest Avenue
Locust Valley, New York

.5 miles S

(*) Located outside of proposed service area, but included in data due to proximity thereto.

† Include applications pending and those approved but not opened.

EXCERPT FROM EXHIBIT A TO GERBER AFFIDAVIT - COMPTROLLER
OF THE CURRENCY ADMINISTRATIVE FILE--INVESTIGATION REPORT

Form CC 1030-OX Page 4
CM Revised March 1971
UNITED STATES TREASURY
COMPTROLLER OF THE CUR

Gerber No. 2370

PROPOSED BRANCH--continued

Provide the following information with respect to Savings and Loan and Mutual Savings Banks located within the proposed service area.

Names and addresses	Date established if within three years	Share accounts	Loans	Distance by road mileage and direction from proposed branch
PRUDENTIAL SAVINGS BANK NEW YORK, NEW YORK		565,619M	501,153M	
Locust Valley Office 200 Birch Hill Road Locust Valley, New York		25,000M	Not Available	260 feet N.

Indicate numbers of following institutions in service area. **None**

	<u>3 years ago</u>	<u>Present</u>
a. Credit Unions	_____	_____
b. Finance companies	_____	_____
c. Insurance companies	_____	_____
d. Other	_____	_____

Indicate the degree of intensity of competition in service area by Savings and Loan, Mutual Savings Banks, Credit Unions, etc.

Applicant anticipates that, due to the close proximity of the branch of Prudential Savings Bank, the degree of competition for time deposits will be high. Applicant further feels that because of the wide variety of banking services offered by it, competitive conditions will be favorable.

EXCERPT FROM EXHIBIT A TO GERBER AFFIDAVIT - COMPTROLLER
OF THE CURRENCY ADMINISTRATIVE FILE--INVESTIGATION REPORT

Form CC-1030-0X Page 5
CD Revised March 1971
UNITED STATES TREASURY
COMPTROLLER OF THE CU

C. No. 2370

PROPOSED BRANCH--continued

Comment on the economic character of the area to be served. See below.

- A. If area is largely residential, state whether homes are generally owner-occupied, the extent of housing development, type, quality, price level, average age, number of unsold new homes, and prospects for continued development.
 - B. If primarily industrial or business, state the number and general types of business, and in the cases of principal employers, give the name of each company or firm, number of employees, and payrolls, and comment on the consistency of employment and special skills required.
 - C. Shopping center locations should be fully described. State the number of units, size as to total land and building areas, number of individual automobile parking spaces, accessibility to surrounding communities, the extent to which signed leases have been obtained, the names of principal lessees, and provide information as to their financial responsibility if not national concerns.
 - D. Provide information regarding population growth potential; new businesses recently established or planned, etc. Discuss the traffic pattern, the street and road facilities, and their adequacy. Describe geographical barriers, if any.
-
- A. Area is largely residential and homes are generally owner-occupied and in good repair. As of 1970 there were 2,882 housing units in the area. Homes in the area have an average value of approximately \$41M and values extend to in excess of \$100M in the northern sector of this affluent area. The majority of the homes were built prior to 1950 and very little, if any, land remains available for future development.
 - B. Area is primarily residential and contains only a small number of retail establishments.
 - C. While not a shopping center location, proposed site is adjacent to the only shopping center in the area. This small center contains a Gristedes Supermarket with 6 check-outs, 10 small retail stores and the branch of Prudential Savings Bank.
 - D. Population, since 1960 has increased 18% and only 2% since 1970. It is felt that, due to lack of available land and restrictive zoning requirements, future growth will be minimal. The only new business planned for the area will be located in an office building which is under construction. This building, whose tenants are unknown at present, is located on Forest Avenue adjacent to the branch of the Hempstead Bank. Access to the proposed branch is good with Birch Hill Road, a major artery, running north and south and Horse Hollow Road and Forest Avenue, both major east-west arteries in the area, within one-half mile of the site. The only geographical barrier is the Long Island Sound located to the north of the service area.

EXCERPT FROM EXHIBIT A TO GERBER AFFIDAVIT - COMPTROLLER
OF THE CURRENCY ADMINISTRATIVE FILE--INVESTIGATION REPORT

Form CC-1930-0X Page
CM Revised March 1971
UNITED STATES TREAS
COMPTROLLER OF THE CURRENCY

C. er No. 2370

PROPOSED BRANCH--continued

The following are the applicant's estimates of:

	DEPOSITS		LOANS	
	New	Existing	New	Existing
Now held in the Head Office or other branches originating in the area.	xxxxxxxxxx -----	-----	xxxxxxxxxx -----	-----
Which the proposed branch may hold at the end of one year.	<u>1,800M</u>	<u>1,800M</u>	<u>200M</u>	<u>200M</u>
Which the proposed branch may hold at the end of three years.	<u>2,200M</u>	<u>4,000M</u>	<u>800M</u>	<u>1,000M</u>

Indicate methods used in arriving at estimates.

Estimates are based upon comparisons with existing branches of the applicant serving a similar market.

To what extent will the proposed branch enable the bank to more efficiently serve existing business?

Applicant feels that with its closest branch located over seven miles away, there is no existing business originating in the service area.

EXCERPT FROM EXHIBIT A TO GERBER AFFIDAVIT - COMPTROLLER
OF THE CURRENCY ADMINISTRATIVE FILE--INVESTIGATION REPORT

FD-302 (Rev. 10-6-64)
Cl. Rev. 10-6-64 March 1971
UNITED STATES TREASURY
COMPTROLLER OF THE CURRENCY

File No. 2370

PROPOSED BRANCH--continued

If the proposed branch is not primarily intended to better serve the bank's existing customers, is it reasonable to expect that the available banking business will be adequate to insure profitable operations?

Yes

What estimated period will be required to place the operations of the branch on a profitable basis? (Give management's opinion.) A detailed projection of earnings and expenses should be shown below.

Three years.

Income	First Year	Second Year	Third Year
Interest			
Service Charges--Deposits			
Other Based on % of Gross Earnings to Average Deposits Last Year, Rate 7.5%	59M	147M	218M
Total	59M	147M	218M

Expenses	First Year	Second Year	Third Year
Rent and Real Estate Taxes	15M	15M	15M
Depreciation	5M	5M	5M
Salaries	66M	69M	80M
Utilities	2M	2M	2M
Other Interest on Deposits	25M	63M	93M
Miscellaneous	14M	17M	20M
Total	127M	171M	215M
Estimated Profit or (Loss)	(68M)	(24M)	3M

Branch Banking House and Equipment.

(A) COSTS

If to be purchased:

- (1) Land \$ To be leased.
 Building \$ 61M (Leasehold Improvements)
 Furniture and Fixtures \$ 33M
 Vault \$ 26M
 Total \$ 120M

- (2) Will the amount to be invested in branch quarters result in an investment in excess of bank's capital?
 No

- (3) If to be leased, give terms in brief and describe the quarters. Building to be leased for a 23 year period at the following annual rental terms: \$11,890 for the first 3 years; \$12,300 for the next 5 years; \$13,120 for the following 5 years; and \$13,940 for the last 10 years. Two 10 year renewal options are available at rates to be agreed upon or arbitrated. Additionally, real estate taxes to be paid are estimated at \$2,400 per year and common area maintenance

EXCERPT FROM EXHIBIT A TO GERBER AFFIDAVIT - COMPTROLLER
OF THE CURRENCY ADMINISTRATIVE FILE--INVESTIGATION REPORT

Form CC-1930-0X P2
CM Revised March 1971
UNITED STATES TREASURY
COMPTROLLER OF THE CURRENCY

Counter No. 2370

PROPOSED BRANCH--continued

(B) ACQUISITION, CONSTRUCTION AND OCCUPANCY

- (1) If new construction, furnish anticipated completion date.

Six to nine months from date of approval by authorities.

- (2) If a temporary location is planned furnish exact address, distance and direction from permanent location, and period it will be occupied.

No temporary location planned.

- (3) State the approximate period of time that will be required to place branch in operation in temporary and/or permanent site.

Six to nine months from date of approval by authorities.

OTHER COMMENTS

None

Carol L. Milster
National Bank Examiner

BY

Carol L. Milster
~~Regional~~ Deputy Regional Administrator
of National Banks

EXCERPT FROM EXHIBIT A TO GERBER AFFIDAVIT - COMPTROLLER
OF THE CURRENCY ADMINISTRATIVE FILE--INVESTIGATION REPORT

On July 1972
UNITED STATES TREASURY
COMPTROLLER OF THE CURRENCY

Name of Examiner Eddy L. Milstein National Bank Region 2Dates investigation made August 26 and 27, 1974 Charter No. 2370CONFIDENTIAL MEMORANDUM TO THE COMPTROLLER
OF THE CURRENCY ON A BRANCH APPLICATION FILED BY

The Chase Manhattan Bank (National Association) New York New York New York
(Bank) (City) (County) (State)

FOR PERMISSION TO ESTABLISH A BRANCH TO BE LOCATED AT

East side of Birch Hill Road
between Lindberg and Davis Streets Locust Valley Nassau New York
(Street and Address) (City) (County) (State)

A.	Capital Structure: (Latest figures— from call report)	<u>June 30, 1974</u>	Capital Deb.	<u>144,985M</u>
	(a) Total deposits	<u>\$ 35,156,258M</u>	Capital	
	(b) Total loans	<u>\$ 24,955,043M</u>	Preferred	<u>536,275M</u>
	(c) Total classified assets	<u>\$ 783,926M (a)</u>	Common	<u>708,997M</u>
	(d) Total assets	<u>\$ 42,495,393M</u>	Surplus	<u>429,923M</u>
			Profits	<u>2,925M</u>
			Reserves	
			Bad Debt and	
			Valuation	
			Reserves	<u>330,490M</u>
			Total	<u>2,153,595M</u>

(a) As of September 4, 1973 examination.

B.	Population of Head Office City	1960 Census	<u>7,781,984</u>
		1970 Census	<u>7,895,563</u>
		present estimate	<u>7,847,100</u>

C.	Population of City, Town, County, Village or Municipality in which the proposed branch is to be located	1960 Census	<u>3,321</u>
		1970 Census	<u>3,932</u>
		present estimate	<u>4,043</u>

D.	Estimated population of the service area of proposed branch	1960	<u>8,600</u>
		1970	<u>9,950</u>
		present	<u>10,150</u>

E. This area extends from the branch location approximately 1.9 miles north; 1.7 miles east; 1.7 miles south and .6 miles west.

EXCERPT FROM EXHIBIT A TO GERBER AFFIDAVIT - COMPTROLLER
OF THE CURRENCY ADMINISTRATIVE FILE--INVESTIGATION REPORTForm CC-1930-OX Pa
CM Revised March 1971
UNITED STATES TREASURY
COMPTROLLER OF THE CURRENCYC er No. 2370

CAPACITY OF APPLICANT BANK TO ACCOMMODATE BRANCH EXPANSION

Are there any asset, management, capital, or other problems which may be considered as factors against branch expansion?
If so, comment.

No

Have branch policies generally been sound in character?

Yes

Are existing branches profitable?

No. See page B-1.

Answers to the above three questions made by C. M. Van Horn (Regional Administrator of National Banks,
~~XXXXXXXXXXXXXXXXXXXX~~

PROPOSED BRANCH

Provide the following information with respect to other branches of applicant bank located within service area of the proposed branch.

Map number and
names and addressesDepositsLoansDistance by road mil
age and direction fr
proposed branch

Applicant has no other offices within the service area. Nearest office is:

Roslyn Branch	12,301M	7,456M	7.9 miles SW
49 Bryant Avenue			
Roslyn, New York			

Provide the following information with respect to competitive banks and branches located within the service area of the proposed branch.

Map number and
names and addressesDepositsLoansDistance by road mil
age and direction fr
proposed branch

HEMPSTEAD BANK	180,489M	101,315M	
HEMPSTEAD, NEW YORK			
Matinecock Office	12,300M	6,400M	.3 miles S
63 Forest Avenue			
Locust Valley, New York			
Oak Neck Office	2,400M	1,500M	2.7 miles NE
74 Bayville Avenue			
Bayville Village, New York			
NASSAU TRUST COMPANY	102,697M	72,887M	
GLEN COVE, NEW YORK			
Locust Valley Branch	9,500M	375M	.5 miles S
147 Forest Avenue			
Locust Valley, New York			

(*) Located outside of proposed service area, but included in data due to proximity thereto.

EXCERPT FROM EXHIBIT A TO GERBER AFFIDAVIT - COMPTROLLER
OF THE CURRENCY ADMINISTRATIVE FILE--INVESTIGATION REPORT

Form CC-1930-0X Page
Revised March 1971
UNITED STATES TREASURY
COMPTROLLER OF THE CURRENCY

ter No. 2370

PROPOSED BRANCH (Continued)

Comment on the economic character of the area to be served:

3. The examiner should determine the general accuracy of the economic data submitted by the applicant. All significant inaccuracies and omissions should be detailed with an appropriate comment.

Generally concur.

Listing of Applicant's estimates of Loans and Deposits:

4. Does the examiner concur generally with Applicant's estimates?

If not, comment thereon.

Generally concur.

5. Comment fully on any statement that the bank is losing business which could be recouped or retained through establishment of the proposed branch.

No such statement made.

6. What is examiner's opinion as to estimated period required to place operations of branch on a profitable basis?

Appears reasonable.

Branch Banking House and Equipment.

1. Comment fully if rental or costs are considered unreasonable.

Considered reasonable.

2. Is property to be purchased or leased from a director, officer, or large shareholder? **No** If so, comment fully with respect to Title 12, U.S.C. 375.

3. Expiration date of any option to purchase or lease.

None

EXCERPT FROM EXHIBIT A TO GERBER AFFIDAVIT - COMPTROLLER
OF THE CURRENCY ADMINISTRATIVE FILE--INVESTIGATION REPORT

Form CC-1400-DX Page D
Revised March 1971
UNITED STATES TREASURY
COMPTROLLER OF THE CUR.

Cl. No. 2370

PROPOSED BRANCH--continued

Discuss the merits of any known protests against the establishment of the proposed branch (to be commented upon by either the Regional Administrator or the Examiner)

See page D-1.

COMMENTS, SUMMARY AND RECOMMENDATION

FAVORABLE FACTORS:

1. Establishment of the branch would add a competitive factor to the area.
2. Establishment of the branch would enable the bank to extend its facilities into an area not currently serviced by the applicant.
3. The affluence of the area would seem to indicate that it can support the proposed branch without causing greatly adverse conditions.

UNFAVORABLE FACTORS:

1. Future growth of the area would seem to be minimal.

SUMMARY AND RECOMMENDATION:

It would appear that establishment of the branch would provide additional competition in the area and allow the bank to offer its services in an area not now truly serviced by the applicant. In view of the above, I recommend approval.

Eddy L. Milstein
National Bank Examiner

By *[Signature]*
~~Regional Administrator~~ Regional Administrator of National Banks

BEST COPY AVAILABLE

EXCERPT FROM EXHIBIT A TO GERBER AFFIDAVIT - COMPTROLLER
OF THE CURRENCY ADMINISTRATIVE FILE--INVESTIGATION REPORT

Yellow Insert
CR Rev. January 1966
UNITED STATES TREASURY
COMPTROLLER OF THE CURRENCY

Charter No. 2370

PROPOSED BRANCH - continued

The following were contacted: Hempstead Bank, Vice President Curtis F. Velsor; Nassau Trust Company, Executive Vice President Eugene Curry; and Prudential Savings Bank, Executive Vice President Nicholas A. Mullins, Jr. Mr. Mullins voiced no objection. Both Mr. Velsor and Mr. Curry strongly objected on the grounds that the community is adequately serviced at present and that it cannot support additional competition without adversely affecting them. Mr. Velsor supported his view by stating that deposits and loans in his bank's branches in the area have either remained relatively stable or diminished slightly since 1970. Although this argument may have some merit, it is possible that many of the area residents, who work in New York City, may bank there and thus much of their business may be transferred from other New York City banks rather than from local competition.

EXCERPT FROM EXHIBIT A TO GERBER AFFIDAVIT - COMPTROLLER
OF THE CURRENCY ADMINISTRATIVE FILE--INVESTIGATION REPORT

Form CC-1930-OX Page F
Revised March 1971
UNITED STATES TREASURY
COMPTROLLER OF THE CURRENCY

Quarter No. 2370

PROPOSED BRANCH--continued
REGIONAL ADMINISTRATOR'S COMMENTS AND RECOMMENDATIONS

1. Have comments been received from State Superintendent of Banks No ? If so, give his views.

2. Comments, Summary and Recommendations:

CONFLICTS

None

OBJECTIONS

Hempstead Bank, Hempstead, New York, and Nassau Trust Company, Glen Cove, New York, objected on the grounds that the community is adequately serviced at present and that it cannot support an additional bank without adversely affecting those banks already located in the area. Nassau Trust Company also requested that a hearing be held on the application but the request was denied as untimely. Objections are considered to have little merit.

CONDITION OF BANK

Fair. At the last examination, September 4, 1973, classified assets represented 33.7% of gross capital funds with other assets especially mentioned representing an additional 28.6% of gross capital funds. Management is competent and earnings are good. Capital is marginal with loans at 8.3 times gross capital funds.

SUMMARY AND RECOMMENDATION

I concur with the findings of the investigating examiner and recommend that the application of The Chase Manhattan Bank (National Association), New York, New York, for permission to establish a branch at the east side of Birch Hill Road between Lindberg and Davis Streets, Locust Valley, Nassau County, New York, be approved.


Regional Administrator of National Banks

Date September 10, 1974

EXCERPT FROM EXHIBIT A TO GERBER AFFIDAVIT - COMPTROLLER
OF THE CURRENCY ADMINISTRATIVE FILE--LETTER DATED 10/1/74
OF DEPUTY COMPTROLLER OF CURRENCY DENYING NASSAU TRUST
COMPANY'S REQUEST FOR A HEARING

October 1, 1974

Mr. David J. Dowd
President
Nassau Trust Company
Glen Cove, New York 11542

Dear Mr. Dowd:

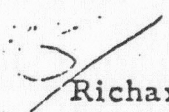
Re: Application of Chase Manhattan Bank,
N. A., for a branch office on the East
side of Birch Hill Road, Locust Valley,
Nassau County, New York

Your letter of September 23, 1974, addressed to the Comptroller and requesting a hearing in connection with the subject application has been referred to me.

Both your letter and our files indicate that the application was filed on August 7, 1974. Since publication of the filing was completed on August 14, 1974, you had, until August 24, 1974, to request a hearing in writing (12 C.F.R. §5.4). Your counsel's letter of August 24, 1974, requesting a hearing was received in our Regional Office on August 28, 1974. Your letter of August 29, 1974, (postmarked September 3, 1974) was also late. The Regional Administrator, Mr. Van Horn, did not deem it in the public interest to order a hearing on your belated request.

In as much as you received the notice of the filing of the subject application as it appeared in the weekly bulletin of the New York State Banking Department on August 19, 1974, you had time to make your request for a hearing in writing. You now give no compelling reason why Mr. Van Horn's refusal to afford a hearing should be reversed.

Very truly yours,


Richard J. Blanchard
Deputy Comptroller of the Currency

Handwritten notes in bottom left corner:
10-2

EXCERPT FROM EXHIBIT A TO GERBER AFFIDAVIT - COMPTROLLER
OF THE CURRENCY ADMINISTRATIVE FILE--LETTER DATED 9/23/74
FROM NASSAU TRUST COMPANY APPEALING DENIAL OF HEARING
BY REGIONAL ADMINISTRATOR

NASSAU TRUST COMPANY

ESTABLISHED 1892

GLEN COVE, NEW YORK 11542

DAVID J. DOWD
PRESIDENT

September 23, 1974

Mr. James E. Smith
Comptroller of the Currency
Administrator of National Banks
Washington, D. C. 20219

Re: Application of Chase Manhattan Bank,
N.A., for a branch office on the East
side of Birch Hill Road, Locust Valley,
Nassau County, New York

Dear Mr. Smith:

We write to seek a hearing to oppose the above application. This Bank, which maintains a branch office in the hamlet of Locust Valley, requested a hearing before the Regional Administrator to oppose the application and was summarily denied such by the Regional Administrator. We appeal to you from such ruling.

We summarize the events leading to our appeal to you as follows: On August 7, 1974, Chase Manhattan Bank filed for permission to open a branch office in Locust Valley, New York. Notice of this application was included in the weekly bulletin of the New York State Banking Department dated Friday, August 16, 1974, which was received by Nassau Trust Company in the middle of the week of August 19th. This application was listed on the reverse of the last page of the notice and you will note the five zeros at the end of page 3, leading us to believe the application had ended at the five zeros.

This application was brought to our attention, I believe, on August 26th by the Federal National Bank examiner, who was doing the branch application examination and who called me for the purpose of obtaining certain data with respect to Nassau Trust Company's experience in maintaining a branch in Locust Valley. I advised the examiner that the Trust Company vehemently objected to the grant of the application and that we would file written objections and request a hearing before the Regional Administrator to state our case more fully.

EXCERPT FROM EXHIBIT A TO GERBER AFFIDAVIT - COMPTROLLER
OF THE CURRENCY ADMINISTRATIVE FILE--LETTER DATED 9/23/74
FROM NASSAU TRUST COMPANY APPEALING DENIAL OF HEARING
BY REGIONAL ADMINISTRATOR

NASSAU TRUST COMPANY - 2.

Mr. James E. Smith

September 23, 1974

When discovered on Monday, August 26th, we notified our Counsel, Payne, Wood & Littlejohn, 138 Glen Street, Glen Cove, New York. They immediately notified your Regional Counsel, by telephone, at the New York office and advised him that Nassau Trust Company was objecting to the application, that it was requesting a hearing and that it requested a copy of the application filed by Chase Manhattan Bank. Copy of the Counsel's letter which went out the following day is annexed hereto.

We received no direct notice of this application from the Regional Administrator.

Our written notice of objection and request for a hearing followed in due course. It was denied by Mr. Van Horn.

It is abundantly clear:


1. Nassau Trust Company did not receive adequate notice of the pending application within the spirit of 12CRF5.
2. Even if the notice is deemed to be within the letter of 12CRF5, the Trust Company has complied with the intent of 12CRF5 by its Counsel calling the Regional Counsel and advising him of the Trust Company's opposition to the application and its request for a hearing and for a copy of the filing.
3. The application of Chase Manhattan Bank is deficient and requires denial. The applicant has substantially overstated population estimates. It has misinterpreted and grossly overstated average income estimates so as to lead to a material distortion of the economic condition of the community, and accordingly, pursuant to State Law, the application for a branch office would be required to be denied as a matter of law were this an application by a State Bank.

As to the law involved, we enclose herewith a brief memorandum of our Counsel outlying the law with regard to this application as we see it.

We write to request that you overrule the ruling of Mr. Van Horn who summarily denied us a hearing at which we would be given the present data which would support our objections.

We therefore renew our request for the opportunity to present our evidence at a hearing before the Regional Administrator.

Sincerely,



EXCERPT FROM EXHIBIT A TO GERBER AFFIDAVIT - COMPTROLLER
OF THE CURRENCY ADMINISTRATIVE FILE--LETTER DATED 9/27/74
FROM NASSAU TRUST COMPANY'S ATTORNEYS REQUESTING A HEARING

Payne, Wood & Littlejohn
Counsellors at Law
139 Glen Street
Glen Cove, N. Y. 11542

August 27, 1974.

Regional Administrator of National Banks
Federal Reserve Bank of New York
33 Liberty Street
New York, N.Y.

Re: Application of Chase Manhattan Bank N. A.

East side of Birch Hill Road, Locust Valley,
Nassau County, New York.

Att. Mr. Van Horn.

Dear Mr. Van Horn:

We write as attorneys for Nassau Trust Company, which is this day by separate cover filing with you an objection to the grant of the application by Chase Manhattan Bank N.A. for a branch office on the east side of Birch Hill Road, Locust Valley, Nassau County.

The Trust Company is also requesting a hearing before you in order to fully state its case for objection.

We would ask you, if possible, to forward to us a copy of the filing made by Chase Manhattan Bank in support of their application for this branch office.

If you would advise us of the cost of this copying we will forward to you our check for the appropriate amount.

Sincerely,

PCK:Ek

Philip C. Kilian.

EXCERPT FROM EXHIBIT A TO GERBER AFFIDAVIT - COMPTROLLER
OF THE CURRENCY ADMINISTRATIVE FILE--MEMO TO NASSAU TRUST
COMPANY FROM ITS ATTORNEYS

Memo to Nassau Trust Company from Payne,
Wood & Littlejohn

In order to provide competitive equality between State banks and National banks, Congress adopted 12 USC Sec. 56 (c) (2) which provides in pertinent part that a National bank may establish a new branch with the approval of the Comptroller "if such establishment and operation are at the time authorized to State banks by the statute law of the State in question by language specifically granting such authority, affirmatively and not merely by implication or recognition, and subject to the restrictions as to location imposed by the law of the State on State banks. [emphasis supplied. Absence of the word "statute" in the last clause should be noted]. The New York State Banking Board by General Regulation Part 29, Sec. 29.1 (a) in adopting regulations to be followed by the Superintendent and to be followed, of course, by the Banking Board, provides as follows:

"(a) Service area and population. In acting upon bank and trust company branch applications, the superintendent shall give consideration to the character and extent of the area to be served by the proposed branch. Normally there should be a population of 5,000 persons per commercial bank facility within a reasonably defined service area. In congested areas or in the case of shopping centers or areas which exceed 275,000 square feet of selling space, a service area may be shared with other commercial bank facilities. In service areas of above average income or in service areas consisting primarily of working population, a reduction in the population requirement stated above shall be permitted. In residential service areas of lower than average income, a higher population shall be required."

While the Comptroller has stated on many occasions that it is bound only by the narrow language of the statute law of the States, the Supreme Court of the United States and the lower courts have held that "National branch banking is limited to those states the laws of which permit it, and even there, 'only to the extent that the State laws permit branch banking'". (First National Bank of Logan vs. Walker Bank and Trust Co. 384 US 252, 261 (1966)).

EXCERPT FROM EXHIBIT A TO GERBER AFFIDAVIT - COMPTROLLER
OF THE CURRENCY ADMINISTRATIVE FILE--MEMO TO NASSAU TRUST
COMPANY FROM ITS ATTORNEYS

In First National Bank against Dickinson (396
US 122, 130 (1969) the court held:

"The conditions under which National banks may establish branches are embodied in Sec. 7 of the McFadden Act, 44 Stat. 1228, as amended, codified in 12 USC Sec. 36. One such condition is that a "branch" may be established only when where and how State law would authorize a State bank to establish and operate such a branch, 12 USC 36 (c)."

In Walker Bank at page 262, the court clearly stated that the restrictions as to banking need not be laid out in the Statute law of the State only, providing such restrictions are part and parcel of the State's published "policy." Therein the Court stated, "as to the restriction being a "method", we have concluded that since it is part and parcel of Utah's policy, it was absorbed by the provisions [Sections] 36 (c) (1) and (2) regardless of the tag placed upon it." See also Jackson vs. First National Bank of Valdosta USDC, M.D. Georgia, 246 F. Supp. 134, 139 wherein the court held that "the exact standards of the [State] banking law must be applied ***". Citing Commercial Security Bank vs. Saxon, 236 F. Supp. 457 (D.C. 1964). In addition, note 13a in the Bank of Valdosta case p. 141, should be examined as further proof that the "law" of the State includes its promulgated regulations.

Were this not the case, the doctrine of competitive equality could be rendered a sham in complete contravention of the direction of Congress which has been expressed most clearly in 12 USC 36 (c) (2) wherein Congress, intentionally and specifically omitting the word "statute," limits the opening of National bank branches "subject to the restrictions as to location imposed by the law of the State on State Banks" [emphasis supplied].

Now we turn to the facts of the application at hand. The State of New York has a general rule which requires 5,000 persons per commercial bank facility. The service area has a population of no more than approximately 8,000. It presently has two vigorous, competing commercial

EXCERPT FROM EXHIBIT A TO GERBER AFFIDAVIT - COMPTROLLER
OF THE CURRENCY ADMINISTRATIVE FILE--MEMO TO NASSAU TRUST
COMPANY FROM ITS ATTORNEYS

bank facilities in the heart of the service area. It is also serviced by a New York City based mutual savings bank. The population in the immediate service area is slightly above average. However, there exists in the outlying areas of the of the general service area a few families of absolutely extraordinary wealth. The addition of the third commercial bank facility would reduce the population average to approximately 2700 persons per commercial bank office, which is approximately one half the number called for by the State of New York and required by the State of New York for the establishment of a State chartered branch banking office at that location. This would not even meet the population requirements required even if Chase's average income figures were accepted.

It is clear that the applicant wholly fails to meet the standards required by the laws of the State of New York for the establishment of a branch banking office. Accordingly, 12 USC Sec. (c) (2) requires the denial of the branch office.

EXCERPT FROM EXHIBIT A TO GERBER AFFIDAVIT - COMPTROLLER
OF THE CURRENCY ADMINISTRATIVE FILE--WEEKLY BULLETIN,
BANKING DEPARTMENT (8/16/74)

WEEKLY BULLETIN

STATE OF NEW YORK

BANKING DEPARTMENT

PUBLISHED PURSUANT TO THE PROVISIONS
OF THE BANKING LAW

ALBANY

August 16, 1974

SECTION I

This section records the filing of applications for charters, branches of banks, trust companies, savings banks, savings and loan associations, licenses of foreign banking corporations and licensed lenders, changes of locations and/or redesignations of offices of these organizations and bank merger and holding company applications. Any comment or objection in relation to any application should be submitted in writing to the Superintendent of Banks within 10 days of the date of this Bulletin. THIS IS THE ONLY WRITTEN NOTIFICATION OF THESE FILINGS THAT WILL BE ISSUED BY THE BANKING DEPARTMENT.

SECTION II

This section records the filing of all other applications not reported under Section I above, actions taken by the Superintendent of Banks and the Banking Board, and other information concerning activities of the Banking Department.

SECTION III

This is a report of notifications of the filing of applications of federally-chartered institutions received from:

Mr. Charles M. Van Horn
Regional Administrator of
National Banks
33 Liberty Street - Room 520
New York, N.Y. 10005

Mr. Philip J. Weiler, Jr.
Supervisory Agent
Federal Home Loan Bank of
New York
60 Broad Street
New York, New York 10004

Within 10 days from the date of this Bulletin, you should communicate any comment or objection in relation to any application of a federally-chartered institution to the supervisor of the institution involved, furnishing a copy to this office. THIS IS THE ONLY WRITTEN NOTIFICATION OF THESE FILINGS THAT WILL BE ISSUED BY THE BANKING DEPARTMENT.

EXCERPT FROM EXHIBIT A TO GERBER AFFIDAVIT - COMPTROLLER
OF THE CURRENCY ADMINISTRATIVE FILE--WEEKLY BULLETIN,
BANKING DEPARTMENT (8/16/74)

SECTION I

- August 9, 1974 UNITED MUTUAL SAVINGS BANK
Location: 1370 Avenue of the Americas, New York, N.Y.
Application dated August 9, 1974 for permission to open and occupy a branch office at 764 White Plains Post Road (Route 22), (Unincorporated Area) Town of Eastchester, Westchester County, New York received.
- August 9, 1974 PROVIDENT SAVINGS AND LOAN ASSOCIATION
Location: 38-40 New Main Street, Haverstraw, New York
Application dated August 9, 1974 for permission to open and occupy a branch office on the north side of Route 59, 575 feet west of the intersection of Airmont Road and Route 59, Airmont, (Unincorporated Area) Town of Ramapo, Rockland County, New York received.
- August 14, 1974 MANUFACTURERS HANOVER TRUST COMPANY
Location: 40 Wall Street, New York, New York
Application dated August 13, 1974 for permission to open and occupy a branch office in Cairo, the Arab Republic of Egypt, received.
- August 14, 1974 BENEFICIAL FINANCE CO. OF NEW YORK, INC.
Location: 31 South Broadway, Yonkers, New York
Application dated August 13, 1974 for permission to change the location of place of business from 1 DeKalb Avenue, Borough of Brooklyn, City of New York to 1 Smith Street, Borough of Brooklyn, City of New York received.
- August 16, 1974 UNITED AMERICAS BANK
Location: 50 Broadway, New York, New York
Application dated August 16, 1974 for permission to open and occupy a branch office in the immediate neighborhood of Broadway and 76th Street, Elmhurst, Borough of Queens, City of New York received.

EXCERPT FROM EXHIBIT A TO GERBER AFFIDAVIT - COMPTROLLER
OF THE CURRENCY ADMINISTRATIVE FILE--WEEKLY BULLETIN,
BANKING DEPARTMENT (8/16/74)

SECTION II
(Continued)

2.

- August 13, 1974 BANKERS TRUST NEW YORK CORPORATION
Location: 280 Park Avenue, New York, New York 10017
- MOHAWK VALLEY STATE BANK
Location: 207 Genesee Street, Utica, New York 13501
- Plan of Acquisition dated as of November 1, 1973, together with Certificates of Compliance of the respective corporations, providing for the acquisition by Bankers Trust New York Corporation of all of the capital stock of Mohawk Valley State Bank, Utica, New York, pursuant to Article III-A of the Banking Law filed, effective at the close of business on August 13, 1974.
- August 13, 1974 MOHAWK VALLEY STATE BANK
Location: 207 Genesee Street, Utica, New York 13501
- Approval given to Certificate of Amendment of Organization Certificate providing:
1. For a change of name from Mohawk Valley State Bank to "BANKERS TRUST COMPANY OF CENTRAL NEW YORK"; and
 2. That Mohawk Valley State Bank shall have the powers specified in Section 100 of the Banking Law of the State of New York, thereby changing the bank to a trust company in accordance with the provisions of Section 94 of the Banking Law.
- Effective at the close of business on August 13, 1974.
- August 14, 1974 WINK CHECK CASHING CORP.
Location: 2556 Olinville Avenue, Bronx, New York 10467
- Application received to engage in business as a Licensed Cashier of Checks in connection with the incorporation of the business of Wilfredo Luquis d/b/a Allerton Check Cashing presently operating at the above indicated address.
- August 14, 1974 CHURCH ROV CHECK CASHING, INC.
Location: 2264 Second Avenue, New York, New York 10009
- Application for license to engage in business as a Licensed Cashier of Checks, received.
- August 14, 1974 KISSENA CHECK CASHING CORP.
Location: 75-17 Parsons Boulevard, Flushing, New York 11366
- Application for license to engage in business as a Licensed Cashier of Checks, received.
- August 14, 1974 FLATBUSH CHECK CASHING SERVICE, INC.
Location: 244 Flatbush Avenue, Brooklyn, New York 11217
- License issued to engage in business as a Licensed Cashier of Checks in connection with a change of location from 286 Flatbush Avenue, Brooklyn, New York 11217 to 244 Flatbush Avenue, Brooklyn, New York 11217.
- August 16, 1974 R & S CHECK CASHING CORP.
Location: 72-26 Roosevelt Avenue, Jackson Heights, N.Y. 11372
- Bulletin item of July 22, 1974 amended to read: Application for license to engage in business as a Licensed Cashier of Checks, received. 72-28 Roosevelt Avenue, Jackson Heights, New York 11372.

(More...)

EXCERPT FROM EXHIBIT A TO GERBER AFFIDAVIT - COMPTROLLER
OF THE CURRENCY ADMINISTRATIVE FILE--WEEKLY BULLETIN,
BANKING DEPARTMENT (8/16/74)

SECTION II

- August 6, 1974 FIRST SAVINGS AND LOAN ASSOCIATION OF TROY
Location: 43 Fourth Street, Troy, New York
- Authorization issued to open and occupy a branch office in Store #2, Greenbush Fair Shopping Center, south side of Routes 9 and 20 at end of Routes 4 and 40, (Unincorporated Area) Town of East Greenbush, Rensselaer County, New York on or after August 7, 1974.
- August 12, 1974 AVCO INSTALLMENT SALES CO., INC.
Location: 2175 Hylan Blvd., Borough of Richmond, City of New York 10306
- Change of Location (Sales Finance Company) [Effective 5/27/74] (Br.) [D/O]
From: 1439 Hylan Blvd., Staten Island, Richmond County, New York 10306
To: 2175 Hylan Blvd., Borough of Richmond, City of New York 10306
- August 12, 1974 THE DARTMOUTH PLAN, INC.
Location: 550 Mamaroneck Avenue, Harrison, New York 10528
- License issued to engage in business as a Sales Finance Company effective 8/7/74. (Br.)
- August 12, 1974 COMMERCIAL CREDIT CORPORATION
Location: 1950 Empire Blvd. - Eastway Plaza, Town of Penfield Monroe County, New York 14526
- Application for license to engage in business as a Sales Finance Company received for examination as of 8/9/74. (Br.) [D/O]
- August 13, 1974 DI POALA-AUTOVINO AGENCY, INC.
Location: 1109 Portland Avenue, Rochester, New York 14621
- Change of Location (Premium Finance Agency) [Effective 7/27/74] (Limited)
From: 1050 Clinton Avenue N, Rochester, New York 14621
To: 1109 Portland Avenue, Rochester, New York 14621
- August 13, 1974 C.I.T. FINANCIAL SERVICES CORPORATION
Location: 294 Hempstead Turnpike, West Hempstead, New York
- Approval given to change the location of place of business from 360 North Saw Mill River Road, Master's Shopping Center, Route 9A, Elmsford, (Unincorporated Area) Town of Greenburgh, Westchester County, New York to 10 West Main Street, Elmsford, Westchester County, New York on or after August 13, 1974.
- August 13, 1974 HYFIN CREDIT UNION
Location: 1801 Avenue M, Brooklyn, New York
- Approval given to change the location of place of business from 1801 Avenue M, Borough of Brooklyn, City of New York to 2303-05 Coney Island Avenue, Borough of Brooklyn, City of New York on or after August 14, 1974.
- August 14, 1974 WOODSIDE SAVINGS AND LOAN ASSOCIATION
Location: 60-16-22 Woodside Avenue, Woodside, New York
- Application dated March 13, 1972 for permission to open and occupy a branch office at 1029 Park Boulevard, Massapequa Park, Nassau County, New York withdrawn.

(More...)

EXCERPT FROM EXHIBIT A TO GERBER AFFIDAVIT - COMPTROLLER
OF THE CURRENCY ADMINISTRATIVE FILE--WEEKLY BULLETIN,
BANKING DEPARTMENT (8/16/74)

SECTION II
(Continued)

3.

August 16, 1974

AMERICAN FINANCE CORPORATION

Location: 112 State Street, Albany, New York

Approval given to change the location of place of business from 121 Montcalm Street, Ticonderoga, Essex County, New York to 160 Montcalm Street, Ticonderoga, Essex County, New York on or after August 16, 1974.

August 16, 1974

APPOINTMENTS OF PERSONNEL

Mr. Robert G. Thomas, 305 East 83rd Street, New York, New York 10028, appointed to the position of Assistant Director of Banking Research and Statistics (Temporary), at a salary of \$19,596 per annum, effective August 9, 1974.

--oo0oo--

EXCERPT FROM EXHIBIT A TO GERBER AFFIDAVIT - COMPTROLLER
OF THE CURRENCY ADMINISTRATIVE FILE--WEEKLY BULLETIN,
BANKING DEPARTMENT (8/16/74)

SECTION III

August 5, 1974

WILBER NATIONAL BANK

Location: Oneonta, New York

Application for permission to establish a branch office in the vicinity of Pyramid Mall, south side of Route 7, Town of Oneonta, Otsego County, New York filed.

August 7, 1974

THE CHASE MANHATTAN BANK (NATIONAL ASSOCIATION)

Location: New York, New York

Application for permission to establish a branch office on the east side of Birch Hill Road between Lindbergh and Davis Streets, Locust Valley, Nassau County, New York filed.

August 7, 1974

CHASE MANHATTAN BANK OF LONG ISLAND (NATIONAL ASSOCIATION)

Location: Melville, New York

Application for permission to establish a branch office on the north side of Middle Country Road, approximately 300 feet east of Route 112, Coram, Suffolk County, New York reconsidered as requested.

August 15, 1974

HOME FEDERAL SAVINGS AND LOAN ASSOCIATION

Location: 70-01 Forest Avenue, Ridgewood, New York 11227

Application for permission to establish a branch office at, or in the immediate vicinity of, 195 Rockaway Avenue, Valley Stream, Nassau County, New York filed.

August 15, 1974

CARVER FEDERAL SAVINGS AND LOAN ASSOCIATION

Location: 75 West 125th Street, New York, New York 10027

Application for permission to establish a branch office at, or in the immediate vicinity of, 1009 Nostrand Avenue, Brooklyn, New York (County of Kings) filed.

August 15, 1974

ISLAND FEDERAL SAVINGS AND LOAN ASSOCIATION

Location: 196 Fulton Avenue, Hempstead, New York 11551

Application for permission to establish a branch office at, or in the immediate vicinity of, the Riverhead Plaza Shopping Center, Old Country Road (County Road #58) and Oliver Avenue, Riverhead, Suffolk County, New York filed.

EXCERPT FROM EXHIBIT A TO GERBER AFFIDAVIT - COMPTROLLER OF THE CURRENCY ADMINISTRATIVE FILE--STATEMENT OF THOMAS BELLINGHAM

Thomas Bellingham has been engaged in commercial banking in the Village of Locust Valley for approximately 50 years. During this time as a resident of Locust Valley he has held the following positions: Vice President and Cashier of Matinecock Bank of Locust Valley 10 years, President and Chief Administrator Officer of Matinecock Bank of Locust Valley 22 years, Vice President of Hempstead Bank 3 years, 20 year member of Nassau County Clearing House Association - Legislative Committee whose main concern was the orderly development of the Nassau County financial community.

As an interested party, particularly well qualified to judge the merits of a branch application in this community, he submits the following statement:

I have reviewed the application of Chase Manhattan Bank, (N.A.) for permission to open and operate a branch bank on the east side of Birch Hill Road between Lindbergh Street and Davis Street, Locust Valley, Nassau County, New York.

I note that the application indicates on p. 10 that, "the area has reached residential maturity". P. 13 "future growth will be minimal". P. 10 "the general service area...is composed of approximately 2,290 families". Two existing commercial banks serve an average of 1,145 families each, or approximately 3,500 persons each.

These statement are statistical fact and should indicate clearly that a third commercial bank in this service area would fulfill no demonstrable need.

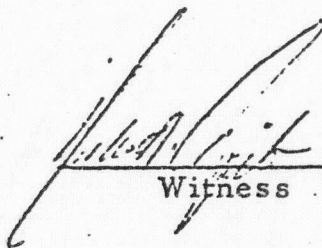
On p. 11 "it should also be noted that many business executives live in this area and commute to New York City via the Long Island Railroad. Consequently Chase will be able to handle the financial needs of these men and their families near their place of residence".

For 51 years Matinecock Bank of Locust Valley and subsequently Hempstead Bank and Nassau Trust Company have provided such full service banking to these executives and it has meant primarily household accounts. These executives maintain their main accounts in banks in New York City while their wives and secretaries operate household accounts of minimal balance sizes in their home locations. The addition of another commercial bank at the proposed location will only further fragmentize the existing banking business. On p. 15, "our Bank can play an important role in fulfilling the increasing need of this community for another full service banking facility and the convenience of one stop shopping and banking".

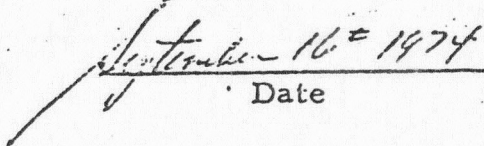
EXCERPT FROM EXHIBIT A TO GERBER AFFIDAVIT - COMPTROLLER
OF THE CURRENCY ADMINISTRATIVE FILE--STATEMENT OF THOMAS
BELLINGHAM

-2-

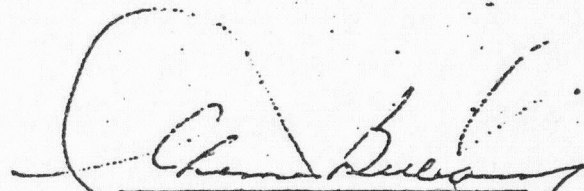
It is my considered opinion that based on my long years of experience as the President and Chief Administrative Officer of a local bank and later Vice President in charge of a branch bank and presently retired but still a resident of 63 years in this community that no such need exists and that in fact this application is based exclusively on Chase Manhattan's expansionary desires which in fact have no bearing on what is good for the community as a whole nor the financial community of this area.



Witness



Date



Thomas Bellingham
36 WEIR LANE
LOCUST VALLEY, N.Y.

EXCERPT FROM EXHIBIT A TO GERBER AFFIDAVIT - COMPTROLLER
OF THE CURRENCY ADMINISTRATIVE FILE--LETTER TO EUGENE K.
CURRY (9/5/74) FROM REGIONAL ADMINISTRATOR DENYING NASSAU
TRUST COMPANY'S REQUEST FOR A HEARING

September 5, 1974

Mr. Eugene K. Curry
Executive Vice President
Nassau Trust Company
9-13 Glen Street
Glen Cove, New York 11542

Re: Application of Chase Manhattan Bank, National
Association, New York, New York, to Establish
a Branch in Locust Valley, Nassau County, New
York

Dear Mr. Curry:

We are returning herewith your letter of August 29, 1974,
postmarked September 3, 1974, concerning the captioned application.

Pursuant to 12 CFR 5, comments relating to an application,
or request for a hearing, must be filed within ten days of the date
of publication of notice.

Our records indicate that this application was accepted
for filing on August 7, 1974, and publication was completed on
August 14, 1974. As such, your letter is untimely, and your request
for a hearing must be denied.

Very truly yours,

C. M. VAN HORN
Regional Administrator of National Banks

W.S.NATHAN:LEV
cc: Mr. Gwin

EXCERPT FROM EXHIBIT A TO GERBER AFFIDAVIT - COMPTROLLER
OF THE CURRENCY ADMINISTRATIVE FILE--LETTER TO PHILIP C.
KILIAN (9/5/74) FROM REGIONAL ADMINISTRATOR DENYING NASSAU
TRUST COMPANY'S REQUEST FOR A HEARING

September 5, 1974

Philip C. Kilian, Esq.
Payne, Wood & Littlejohn
139 Glen Street
Glen Cove, New York 11542

Re: Application of The Chase Manhattan Bank (National
Association), New York, New York to Establish a
Branch in Locust Valley, Nassau County, New York

Dear Mr. Kilian:

In reply to your letter of August 27, 1974, you are advised
that we have denied the request of Nassau Trust Company for a hearing
on the captioned application.

In light of the action taken, please advise whether you
still wish to receive a copy of the application.

Very truly yours,

C. M. VAN HORN
Regional Administrator of National Banks

W.S.NATHAN:LEV
cc: Mr. Gwin

EXCERPT FROM EXHIBIT A TO GERBER AFFIDAVIT - COMPTROLLER
OF THE CURRENCY ADMINISTRATIVE FILE--ACKNOWLEDGMENT OF
HEMPSTEAD BANK'S OBJECTION TO APPLICATION (8/28/74)

August 28, 1974

Mr. Curtis F. Velsor, Vice President
Hempstead Bank
1035 Stewart Avenue
Garden City, New York 11530

Dear Mr. Velsor:

Receipt is acknowledged of your letter dated August 22, 1974, expressing your comments and objections in relation to the application of The Chase Manhattan Bank (National Association), New York, New York, for permission to establish a branch on the east side of Birch Hill Road between Lindbergh and Davis Streets, Locust Valley, Nassau County, New York.

You are assured that your comments and objections will be carefully considered before a decision in the matter is reached.

Very truly yours,

(Signed) C. M. Van Horn

C. M. VAN HORN
Regional Administrator of National Banks

WL:gc

cc: Comptroller of the Currency (Mr. Gwin) ✓
Examiner
Public File

BEST COPY AVAILABLE

EXCERPT FROM EXHIBIT A TO GERBER AFFIDAVIT - COMPTROLLER
OF THE CURRENCY ADMINISTRATIVE FILE--LETTER DATED 8/27/74
FROM NASSAU TRUST COMPANY'S ATTORNEYS REQUESTING A HEARING

PAYNE, WOOD & LITTLEJOHN
COUNSELLORS AT LAW

139 GLEN STREET
GLEN COVE, N. Y. 11542
(516) ORIOLE 6-0700

EDWIN F. HENDRICKSON
VICTOR C. MCCUAIG, JR.
PHILIP C. KILIAN
CORA L. BAUER, MANAGER

O EDWARD PAYNE (1915-1971)
EDWARD T. PAYNE (1909-1922)
CHARLES I. WOOD (1909-1947)
GEORGE A. LITTLEJOHN (1909-1947)

August 27, 1974.

Regional Administrator of National Banks
Federal Reserve Bank of New York
33 Liberty Street
New York, N.Y.

Re: Application of Chase Manhattan Bank N. A.

East side of Birch Hill Road, Locust Valley,
Nassau County, New York.

Att. Mr. Van Horn.

Dear Mr. Van Horn:

We write as attorneys for Nassau Trust Company, which is this day by separate cover filing with you an objection to the grant of the application by Chase Manhattan Bank N.A. for a branch office on the east side of Birch Hill Road, Locust Valley, Nassau County.

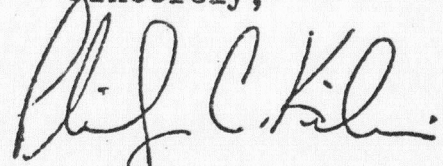
The Trust Company is also requesting a hearing before you in order to fully state its case for objection.

We would ask you, if possible, to forward to us a copy of the filing made by Chase Manhattan Bank in support of their application for this branch office.

If you would advise us of the cost of this copying we will forward to you our check for the appropriate amount.

PCK:Ek

Sincerely,


Philip C. Kilian.

EXCERPT FROM EXHIBIT A TO GERBER AFFIDAVIT - COMPTROLLER
OF THE CURRENCY ADMINISTRATIVE FILE--LETTER DATED 8/22/74
WITH EXHIBITS FROM HEMPSTEAD BANK OBJECTING TO APPLICATION



HEMPSTEAD BANK

ADMINISTRATIVE OFFICES

1035 STEWART AVENUE, GARDEN CITY, NEW YORK 11530

CURTIS F. VELSOR
Vice President
(516) 560-2208
Cable: HEMBANK

August 22, 1974

Mr. Charles M. Van Horn
Regional Administrator
Second National Bank Region
33 Liberty Street, Room 520
New York, New York 10005

Dear Mr. Van Horn:

In the Weekly Bulletin of The Regional Administrator of National Banks, dated August 12, 1974, we were apprised of the finding of an application by the Chase Manhattan Bank, N.A., New York, New York, for permission to open and operate a branch office on the East side of Birch Hill Road between Lindbergh and Davis Streets, Locust Valley, Nassau County, New York.

We object to approval of this application by reason of the following:

1. Exhibit 1 enclosed herewith describes the reasonable service area that such a branch bank would serve from the proposed location. The service area comprises the communities of Locust Valley, Lattingtown, Matinecock, and Mill Neck which are further defined as census tracts 5178.01 and 5178.02 as per the U.S. Bureau of Census 1970.

A review of Schedule A herewith attached shows not only minimal growth in this service area for the past 5 years, but an absolute total of only 7,730 persons, or only 2210 families using an average of 3.5 per family.

In addition, Schedule B also attached herewith indicates median family income of \$13,386. to \$24,781. which admittedly ranks the area high as compared with Nassau County as a whole. However, only approximately 1,030 families are in the \$24,781. family income bracket. The balance,

EXCERPT FROM EXHIBIT A TO GERBER AFFIDAVIT - COMPTROLLER
OF THE CURRENCY ADMINISTRATIVE FILE--LETTER DATED 8/22/74
WITH EXHIBITS FROM HEMPSTEAD BANK OBJECTING TO APPLICATION

HEMPSTEAD BANK

(continued - 2)

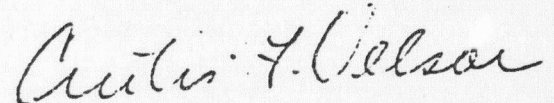
approximately 55% of the service area families primarily in Locust Valley proper, are in a median family income bracket of \$13,386. Obviously, the median family income figures for this area would appear to make it a good source of deposits. Reasonable review of the population figures show this to be an unwarranted assumption. Schedule A attached shows the growth over the past 5 years in this area to be nil and in addition, the 1974 "Survey of Buying Power" by Sales Management shows a net loss in population for Nassau County as a whole in their 1973 marketing statistics.

There already exists in this service area 2 commercial banking offices and a Savings bank. The consumers of this area already have every conceivable type of banking service available. They have the benefit of competitive pricing in fulfilling their commercial banking needs. An additional banking office can only therefore divide the existing banking business between 4 financial institutions rather than 3.

By any judgment or "bench marks" whether population, commerce or disposable income there is not only no demonstrable public need for additional banking facilities, but the addition of another banking office would certainly constitute over banking.

We hope that the points made will receive consideration in arriving at a decision in this case.

Very truly yours,



Curtis F. Velsor
Vice President

CFV/mb
Enclosures

EXCERPT FROM EXHIBIT A TO GERBER AFFIDAVIT - COMPTROLLER
OF THE CURRENCY ADMINISTRATIVE FILE--LETTER DATED 8/22/74
WITH EXHIBITS FROM HEMPSTEAD BANK OBJECTING TO APPLICATION

Schedule "A"

POPULATION

Source: LILCO adjusted for Federal Census of 1970

Population	1969	1970	1971	1972	1973	1974
Locust Valley	3788	3792	3939	4005	4008	4043
Mattingtown	1745	1769	1779	1782	1788	1784
Mill Neck	1089	1118	990	981	1003	1003
Matinecock	905	898	851	854	850	850
	7527	7577	7559	7622	7649	7730
Increase +						
Decrease -		+ .7%	- .2%	+1.4%	+ .3%	+1.6%
year % Increase			+2.7%			

BEST COPY AVAILABLE

EXCERPT FROM EXHIBIT A TO GERBER AFFIDAVIT - COMPTROLLER
OF THE CURRENCY ADMINISTRATIVE FILE--LETTER DATED 8/22/74
WITH EXHIBITS FROM HEMPSTEAD BANK OBJECTING TO APPLICATION

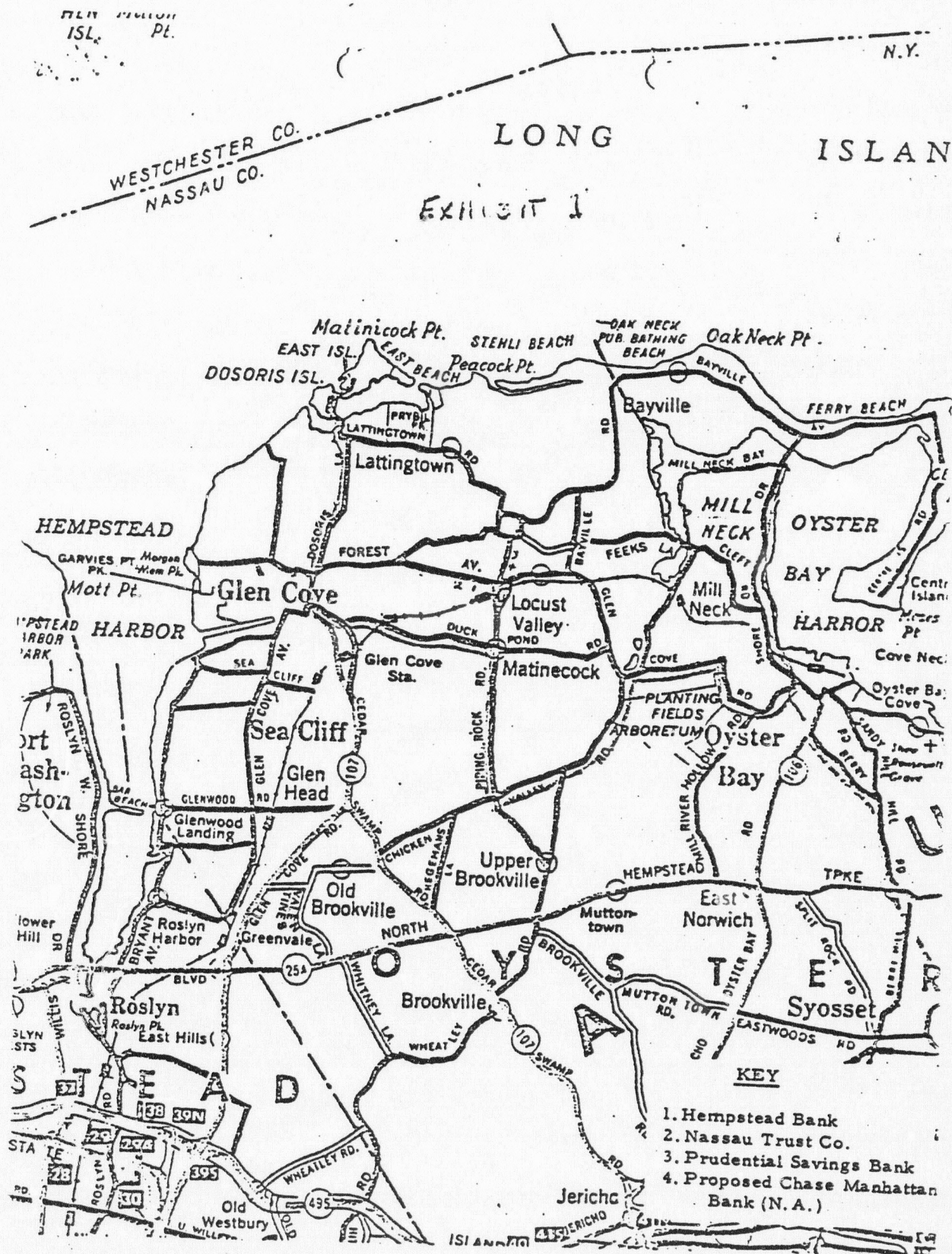
Schedule "B"

FAMILY MEDIAN INCOME

Source: Nassau-Suffolk Regional Planning Board
U.S. Census 1970

Population	Census Tract	1960 Median Family Income	1970 Median Family Income	1970 Census Population	Rank
Locust Valley	5178.2	n.a.	13,386	13,386	176
Wattingtown) Mill Neck) Matinecock)	5178.1	n.a.	24,781	24,781	23

EXCERPT FROM EXHIBIT A TO GERBER AFFIDAVIT - COMPTROLLER
OF THE CURRENCY ADMINISTRATIVE FILE--LETTER DATED 8/22/74
WITH EXHIBITS FROM HEMPSTEAD BANK OBJECTING TO APPLICATION



A-64

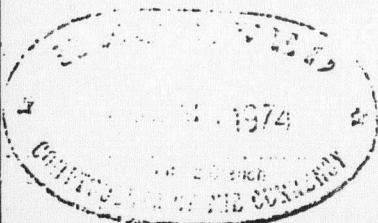
EXCERPT FROM EXHIBIT A TO GERBER AFFIDAVIT - COMPTROLLER
OF THE CURRENCY ADMINISTRATIVE FILE--DEPOSIT MEMORANDUM
COMPTROLLER OF THE CURRENCY
THE ADMINISTRATOR OF NATIONAL BANKS

NO. 595DATE August 20, 1974

DEPOSIT MEMORANDUM

DESCRIPTION	CHECK NO.	CLASSIFICATION		AMOUNT
		ORG.	ACCT.	
NEW BRANCH: East side of Birch Hill Rd. bet. Lindbergh & Davis Sts., Locust Valley, Nassau County, New York.	ED 409227			\$500.00
BY: The Chase Manhattan Bank National Association New York, New York Charter No. 2370				
SIGNATURE <i>J. Cooper</i>	TITLE OR OFFICE Branch Section-521 Wash. Bldg.			\$500.00
				TOTAL

RECEIVED IN ACCOUNTING BRANCH



RECEIPT COPY

Date

Form CC 6043-01 Rev. 11/70

EXCERPT FROM EXHIBIT A TO GERBER AFFIDAVIT - COMPTROLLER
OF THE CURRENCY ADMINISTRATIVE FILE--LETTER OF 8/15/74
FROM CHASE MANHATTAN RE: LEGAL NOTICE OF APPLICATION

THE CHASE MANHATTAN BANK
National Association

1 Chase Manhattan Plaza, New York, New York 10015

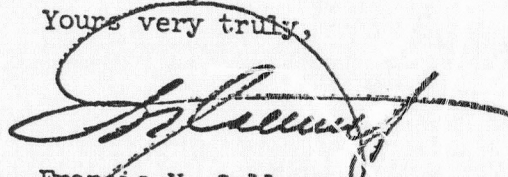
August 15, 1974

Mr. C.M. Van Horn
Regional Administrator of
National Banks
33 Liberty Street, Room 620
New York, N.Y. 10005

Dear Mr. Van Horn:

Supplementing my letter of August 6, 1974, I am pleased to enclose the
tear sheet of the New York Times and Newsday showing the legal notice
to cover the filing of a proposed branch on the East Side of Birch Hill
Road between Lindbergh and Davis Streets, Locust Valley, Nassau County,
New York.

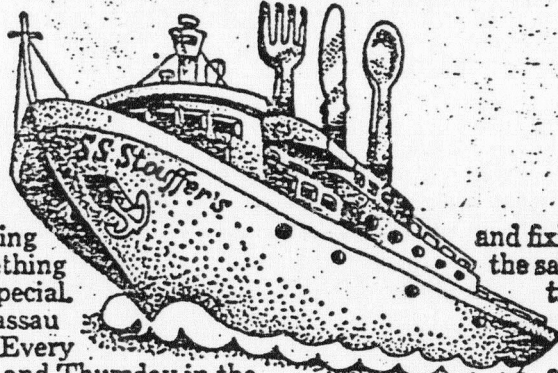
Yours very truly,


Francis N. Collura, Jr.
Second Vice President

etc
yl


EXCERPT FROM EXHIBIT A TO GERBER AFFIDAVIT - COMPTROLLER
OF THE CURRENCY ADMINISTRATIVE FILE--LETTER OF 8/15/74
FROM CHASE MANHATTAN RE: LEGAL NOTICE OF APPLICATION

Take your family on a trip to the Nassau Buffet.



It's something
very new. Something
very special.

It's our Nassau
Buffet. Every

Wednesday and Thursday in the
Nassau Room from 5 til 8 p.m.

And it's the delicious alternative
to cooking for the family. You'll
feast on your favorite things.

Like Beef Stroganoff, Seafood
Newburg, and Pepper Steak. There's
a lavish array of greenery

and fixings at
the salad bar. 5

treats at
dessert.

And of
a selection

beverages. Eat anything you want
as much as you want.

Prices are just to a family's taste.
too. Only \$5.75 for adults and
for under-twelves.

And you can dress as casual
as you want, at

Stouffer's
GARDEN CITY

1081 Franklin Ave. / 747-7050

Legal Notices

"Notice is hereby given that The Chase Manhattan Bank, N.A., New York, New York has filed an application with the Comptroller of the Currency to establish a branch office on the East Side of Birch Hill Road between Lindbergh and Davis Streets, Locust Valley, Nassau County, State of New York. This application was accepted for filing by the Regional Administrator of National Banks on August 7, 1974."

Supreme Court, Nassau County,
Union, Federal Savings and Loan Assoc.

Legal Notices

ciation of New York, Pltff. vs. Lionel S. McKirdy, Carmen Lydia McKirdy, his wife. Defts. Pursuant to Judgment of Foreclosure and Sale dated June 26, 1974, as re-settled, July 31, 1974, Index No. 134/74, duly entered, I, the referee, will sell at public auction at the North Front Steps of Nassau County Court House, Old Country Road, Hempstead, County of Nassau, New York, on the 6th day of September, 1974, at 10:00 A.M., the premises in the Town of Hempstead, Co. of Nassau, State of New York known as 236 Whaley Street, Freeport, N.Y., and situate on the northerly side of Whaley St. distant

Legal

westerly 230 feet by intersection of Whaley St. with w Bayview Ave., be feet in width from feet in depth on e particularly descri Amount due is \$25 Costs, disbursement lowance in sum of Sale is subject to Judgment.

THOMAS A. NEWMAN, ARON Atty. for Plt. & York, N.Y.

EXCERPT FROM EXHIBIT A TO GERBER AFFIDAVIT - COMPTROLLER
OF THE CURRENCY ADMINISTRATIVE FILE--LETTER OF 8/15/74
FROM CHASE MANHATTAN RE: LEGAL NOTICE OF APPLICATION

in providing \$10-million to maintain its current eligibility standards and fee schedule for its day-care centers if the state matched that amount.

Urging the Governor to commit the state to providing the funds, Mr. Carey said an unreasonable limitation on eligibility would drive more working parents to welfare.

been available. A Cuomo aide said that his statement had been filed but that because of a clerical error it had not been notarized and had been sent back. The aide said it had then been notarized and returned.

An Olivieri aide said yesterday that the Assemblyman "sticks by his statement they were not in compliance with the law."

made for the purpose of changing subscriber options in the internal arrangements of data sets. This charge, when applicable, will apply to all data sets.

NEW YORK TELEPHONE COMPANY

BIDS

BIDS

NOTICE IS HEREBY GIVEN that The Chase Manhattan Bank, N.A., New York, New York has filed an application with the Comptroller of the Currency to establish a branch office on the East Side of Birch Hill Road between Lindbergh and Davis Streets, Locust Valley, Nassau County, State of New York. This application was accepted for filing by the Regional Administrator of National Banks on August 7, 1974.

GENERAL SERVICES ADMINISTRATION requests BIDS from small business concerns for INSTALL AIR CONDITIONING UNIT at NAS, Building 2520 Broadway, New York, N.Y. Project No. 49129-PNY 7403. Estimated cost from \$25,000 to \$100,000. Bidding material may be obtained from GSA Business Service Center Bid Room, Main Floor, 24 Federal Plaza, New York, N.Y. 10007, where sealed bids will be received until 1:30 P.M. local time at the place of bid opening September 4, 1974 and then publicly opened.

Election Violation

repaid campaign. He cited union support and prospective contributors who are waiting until they determine whether Mr. Carey has a chance of catching up to his front-running opponent, Howard J. Samuels.

Mr. Samuels has contributed or lent \$240,000 to his own campaign, with \$52,900 of that amount representing loans since June 1. The receipts for the Samuels campaign since May, 1973, total \$1,088,409.

Women Called Seducers
MONTES CLARO, Brazil (UPI)—Saying that "in today's world it is the women and not the men who are doing all the seducing, Judge Emerson Pereira of this small town in the State of Minas Gerais, acquitted Analindo da Silva of charges of seducing a minor, an 18-year-old girl.

THINK FRESH:
THINK FRESH AIR FUND.

Gold coins for sale

Mexican 50 Peso

Republic National Bank of New York, largest gold bullion dealer in U.S. selling to licensed users, is now selling nine different gold coins.

See coupon. You may purchase coins personally in any quantities at the Bank. The minimum mailing order—shipped fully insured with postage paid by us—is 10 coins. For mailing coins in lots of less than 10 there is a \$5 shipping charge.

Call for today's quotes before ordering. 212-695-7610.
Out of N.Y. state, call toll-free 800-223-5578.

Austrian 20 Corona

Please mail me the following gold coins in the quantities indicated. (For less than 10 coin lots add \$5.00 shipping.) Date quoted _____

Note: All payments for orders must be postmarked the same day order is placed.

Quantity

— U.S. \$20.00 "DOUBLE EAGLE" St. Gaudens
— U.S. \$20 "DOUBLE EAGLE" Liberty
— English Old Sovereign

Quantity

— Austrian 100 Corona
— Austrian 20 Corona
— Mexican 50 Peso
— Austrian 4 Ducat
— Austrian 1 Ducat

Ingle's Photography

offers one of New York's
and photography programs.

EXCERPT FROM EXHIBIT A TO GERBER AFFIDAVIT - COMPTROLLER
OF THE CURRENCY ADMINISTRATIVE FILE--LETTER OF REGIONAL
ADMINISTRATOR (8/7/74) ACKNOWLEDGING RECEIPT OF APPLICATION

August 7, 1974

Mr. Francis H. Collins, Jr.
Second Vice President
The Chase Manhattan Bank
(National Association) //
1 Chase Manhattan Plaza
New York, New York 10033

2370

Dear Mr. Collins:

Receipt is acknowledged of your remittance in the amount of \$500.00 and application for permission to establish a branch on the east side of Birch Hill Road between Lindbergh and Davis Streets, Locust Valley, Nassau County, New York.

The application has been accepted for filing today. Within fifteen days, the bank must publish one time in a newspaper of general circulation in the community in which the bank's Head Office is located and in a newspaper of general circulation in the community in which the proposed branch would be located: the name of the bank, the subject matter of the application, and the date upon which the application was accepted for filing. Immediately thereafter, the bank should furnish this Office with a tear sheet or clipping evidencing such publication. The tear sheet or clipping should clearly indicate the name and date of the newspaper in which the notice appeared.

Within 30 days from the date of filing, the enclosed Summary of Information supporting the application should be prepared and submitted to this Office, in triplicate. If supporting documentation is not received within the 30 day period, the application will be considered to have been abandoned.

If for reasons beyond the control of the bank, the requested Summary of Information cannot be prepared and submitted within the prescribed period, you should file with this Office a written application for an extension of time, setting forth in detail, the factors causing the delay and justifying the requested extension.

Very truly yours,

C. M. VAN HORN
Regional Administrator of National Banks

By: Gerald R. Lipkin

Attorney-in-fact

Enclosure

cc: Comptroller of the Currency (Mr. Gwin; Mr. Brezinski); Examiner/Public File(2)

EXCERPT FROM EXHIBIT A TO GERBER AFFIDAVIT - COMPTROLLER
OF THE CURRENCY ADMINISTRATIVE FILE--APPLICATIONForm 1928
TREASURY DEPARTMENT
Office of the Comptroller of the Currency
November 1970

APPLICATION OF

The Chase Manhattan Bank, N.A. New York New York Charter No. 2370
 (Name of Bank) (County) (State)

FOR PERMISSION TO ESTABLISH A BRANCH.

COMPTROLLER OF THE CURRENCY
Washington, D.C. 20220

SIR:

Application is hereby made for permission to establish a branch of this bank at the following location:

Street Address	City or Town	County
East Side of Birch Hill Rd. bet. Lindbergh & Davis Sts.	Locust Valley (Population 1,428,838) (Nassau County)	Nassau

A certified copy of a resolution of the bank's board of directors authorizing the filing of the aforesaid application is enclosed. A current statement of condition of this bank and a copy of the pertinent State statutes reflecting whether a State bank could be authorized to establish a branch in the location applied for are also enclosed.

The area to be served by the proposed branch has an estimated population of 10,150.
 The following are the banking units now operating nearest to the location of the proposed branch:

Name of Bank	Head Office or Branch	Street Address	Distance From Location of Proposed Branch
See Brochure			

The following is a brief summary of the board's reasons for believing that establishment of the branch would be in the interests of the bank.

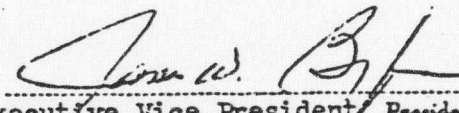
See Brochure

Additional details concerning the proposal may be obtained by communicating with _____

Mr. John R. Phillips Vice President (Telephone No. 552-4542).
 (Name) (Title)

It is understood that the cost of any necessary investigation in relation to the application will be borne by this bank.

Date August 6, 1974


 Executive Vice President President or Cashier.

EXCERPT FROM EXHIBIT A TO GERBER AFFIDAVIT - COMPTROLLER
OF THE CURRENCY ADMINISTRATIVE FILE--APPLICATION

INSTRUCTIONS

An original and one copy of the application should be filed with the Regional Comptroller of the Currency.

If the establishment of more than one branch is being considered at the same time, a separate application should be filed for each proposed branch:

If the proposal involves the take-over of another bank, with or without branches, a statement to that effect, with the name of the bank, should be included in the summary of the board's reasons for believing that establishment of the branch would be in the bank's interests.

If there is doubt about the adequacy or construction of State statutes relating to branches for State banks, a copy of opinion of counsel for the bank supported by court decisions, an opinion of the Attorney General, or other authority upon which counsel relies, should accompany the application.

EXCERPT FROM EXHIBIT A TO GERBER AFFIDAVIT - COMPTROLLER
OF THE CURRENCY ADMINISTRATIVE FILE--APPLICATION

I, Michael E. Carlson, hereby certify that I am Secretary of THE CHASE MANHATTAN BANK (NATIONAL ASSOCIATION); that the following is a true and correct copy of a resolution duly adopted by the Board of Directors of said Bank at its meeting held on January 16, 1974, at which a quorum was present and voting throughout; and that said resolution has not been revoked or modified but is still in full force and effect:

RESOLVED, that (a) any member of the Executive Office (Chairman of the Board, President, each Vice Chairman of the Board) of this Bank be, and each of them hereby is, empowered to (i) approve the establishment of new branch offices of this Bank at any place within or without the jurisdiction of the United States of America and the relocation or closing of any such branch office; (ii) delegate such authority to any Executive Vice President of this Bank and revoke any such delegation; and (iii) authorize any Executive, Senior or other Vice President of this Bank to make any application to, or file any notice with the appropriate domestic or foreign banking and other regulatory authorities which may be necessary or appropriate in order to establish, relocate or close any branch office, or to obtain any permission required for any such action, in accordance with the authorization of a member of the Executive Office and (b) the Secretary or any Assistant Secretary of the Bank is authorized to certify to the said banking and other regulatory authorities that the establishment, relocation or closing of any such branch office is in accordance with authority duly granted by this Board of Directors.

I hereby further certify that pursuant to the said resolution a member of the Executive Office, or an authorized Executive Vice President, of this Bank has approved:


That we establish a branch of this Bank on the East Side of Birch Hill Road between Lindbergh and Davis Streets, Locust Valley, Nassau County, New York.

and authorized the following officers to make any application to, or file any notice with, any regulatory authority that may be necessary in connection therewith:

James W. Bergford, Executive Vice President
Louis P. Buglioli, Vice President
J. Howard McGloon, Vice President

IN WITNESS WHEREOF, I have hereunto set my hand and the seal of The

Chase Manhattan Bank (National Association) this 6th day of August, 1974.


Vice President and Secretary
~~Vice President and Assistant Secretary~~
~~Assistant Secretary~~

1/16/74

EXCERPT FROM EXHIBIT A TO GERBER AFFIDAVIT - COMPTROLLER
OF THE CURRENCY ADMINISTRATIVE FILE--APPLICATION

A-72

Reprinted from American Banker

May 23, 1974

Chapter No. 2370 National Bank Section No. 2
REPORT OF CONDITION, EXCLUSIVE OF
OVERSEAS OFFICES, OF

The Chase Manhattan Bank, N. A.

of New York in the State of New York, at the close
of business on April 24, 1974, published in response
to call made by Comptroller of the Currency, under
Title 12, United States Code, Section 161.

ASSETS

Cash and due from banks	\$ 2,938,217,216.14
U.S. Treasury securities	420,063,068.37
Obligations of other U.S. Govern- ment agencies and corporations	865,690,187.70
Obligations of States and politi- cal subdivisions	1,512,398,912.57
Other securities	361,844,283.82
Trading account securities	831,882,834.84
Federal funds sold and securities purchased under agreements to resell	61,828,016.90
Loans	12,978,836,166.53
Bank premises, furniture and fix- tures, and other assets repre- senting bank premises	188,870,682.86
Real estate owned other than bank premises	2,697,988.36
Investments in unconsolidated subsidiaries and "associated companies"	167,806,576.45
Customers' liability to this bank on acceptances outstanding	760,857,446.34
Other assets (including \$47,413- 834.89 direct lease financing)	837,706,387.39
TOTAL ASSETS	\$22,967,682,892.81

LIABILITIES

Demand deposits of individuals, partnerships, and corporations	\$ 4,774,712,861.83
Time and savings deposits of in- dividuals, partnerships, and corporations	5,895,434,864.72
Deposits of United States Gov- ernment	234,789,262.81
Deposits of States and political subdivisions	680,862,686.34
Deposits of foreign governments and official institutions	1,967,342,829.49
Deposits of commercial banks	2,112,831,367.12
Certified and others' checks, etc. TOTAL	762,381,836.66

DEPOSITS ..\$16,364,341,892.81

(a) Total demand

deposits ..\$ 2,796,834,821.88

(b) Total time and

savings

deposits ..\$ 7,671,806,762.73

Federal funds purchased and se-
curities sold under agreements

to repurchase

Liabilities for borrowed money

Mortgage indebtedness

Acceptances executed by or for
account of this bank and out-
standing

Other liabilities

TOTAL LIABILITIES

\$20,846,891,611.83

RESERVES ON LOANS

Reserve for bad debt losses on

loans (set up pursuant to IRS

rulings)

Other reserves on loans

TOTAL RESERVES ON LOANS ..

\$ 212,899,316.53

CAPITAL ACCOUNTS

Capital notes (4.80% due 1990) ..

Equity capital-total

Common Stock-total par value ..

No. shares authorized

No. shares outstanding

Surplus

Surplus resulting from assump-
tion of convertible capital
note obligation by parent
corporation

Undivided profits

TOTAL CAPITAL ACCOUNTS ..

\$ 1,987,191,852.18

TOTAL LIABILITIES,

RESERVES, AND CAPITAL

ACCOUNTS

\$22,967,682,892.81

MEMORANDA

Average of total deposits for the

15 calendar days ending with

call date

Average of total loans for the 15

calendar days ending with call

date

Standby letters of credit

I, MICHAEL P. ESPOSITO, JR., Vice President of

the above-named bank, do hereby declare that this

report of condition is true and correct to the best

of my knowledge and belief.

(Signed) Michael P. Esposito, Jr.

We, the undersigned directors, attest to the cor-
rectness of this report of condition and declare that
it has been examined by us and to the best of our
knowledge and belief is true and correct.

(Signed) David Rockefeller

(Signed) Willard C. Butcher

(Signed) George A. Rorer, Jr.

Directors

EXCERPT FROM EXHIBIT A TO GERBER AFFIDAVIT - COMPTROLLER
OF THE CURRENCY ADMINISTRATIVE FILE--APPLICATION

THE CHASE MANHATTAN BANK, NATIONAL ASSOCIATION

Corrections to branch application dated 8-7-74 in support
of a proposed branch to be located on the East Side of
Birch Hill Road, between Lindbergh and Davis Streets,
Locust Valley, Nassau County, New York.

Question #8

Hempstead Bank

Reads: 2- *Bayville Village Office
282 Bayville Avenue,
Bayville, Nassau

Should
Read: 2- *Oak Neck Office
74 Bayville Avenue,
Bayville, Nassau

*Located outside the General Service Area but included
on accompanying map.

EXCERPT FROM EXHIBIT A TO GERBER AFFIDAVIT - COMPTROLLER
OF THE CURRENCY ADMINISTRATIVE FILE--MARKET ANALYSIS IN
SUPPORT OF APPLICATION

THE CHASE MANHATTAN BANK,
NATIONAL ASSOCIATION

EAST SIDE OF BIRCH HILL ROAD,
BETWEEN LINDBERGH & DAVIS STREETS,
LOCUST VALLEY, NASSAU COUNTY,
NEW YORK

EXCERPT FROM EXHIBIT A TO GERBER AFFIDAVIT - COMPTROLLER
OF THE CURRENCY ADMINISTRATIVE FILE--MARKET ANALYSIS IN
SUPPORT OF APPLICATION

The Chase Manhattan Bank, National Association, submits this market analysis to the Regional Administrator of National Banks in support of a proposed branch to be located on the East Side of Birch Hill Road, between Mindbergh and Davis Streets, Locust Valley, Nassau County, New York.

This application is filed in compliance with Title 12 of the United States Code, Section 36, (Revised Statute 5155).

EXCERPT FROM EXHIBIT A TO GERBER AFFIDAVIT - COMPTROLLER
OF THE CURRENCY ADMINISTRATIVE FILE--MARKET ANALYSIS IN
SUPPORT OF APPLICATION

1. THE EXACT ADDRESS OF THE PROPOSED BRANCH -- NUMBER
AND STREET, CITY OR TOWN, AND COUNTY.

The Chase Manhattan Bank, National Association
East Side of Birch Hill Road,
Between Linbergh and Davis Streets,
Locust Valley, Nassau County, New York

2. POPULATION OF HEAD OFFICE CITY AS OF LAST TWO
DECENNIAL CENSUS AND A PRESENT ESTIMATE.

New York City:

1960 Census	7,781,984
1970 Census	7,895,563
1974 Estimate	7,847,100

3. POPULATION OF CITY, TOWN, COUNTY, VILLAGE OR
MUNICIPALITY IN WHICH THE PROPOSED BRANCH IS TO
BE LOCATED AS OF THE LAST TWO DECENNIAL CENSUS
AND A PRESENT ESTIMATE.

Locust Valley:

1960 Census	3,321
1970 Census	3,932
1974 Estimate	4,043

- 4.A. ESTIMATED POPULATION OF THE SERVICE AREA FROM
WHICH THE BRANCH IS EXPECTED TO GENERATE 75% OR
MORE OF ITS LOANS AND DEPOSITS.

General Service Area:

1960 Census	8,600
1970 Census	9,950
1974 Estimate	10,150

EXCERPT FROM EXHIBIT A TO GERBER AFFIDAVIT - COMPTROLLER
OF THE CURRENCY ADMINISTRATIVE FILE--MARKET ANALYSIS IN
SUPPORT OF APPLICATION

- B. THIS AREA EXTENDS FROM THE PROPOSED BRANCH LOCATION
APPROXIMATELY 1.90 MILES NORTH; 1.71 MILES EAST;
1.70 MILES SOUTH; AND 0.62 MILES WEST.
5. DESCRIBE THE TYPES OF BANKING SERVICE THE PROPOSED
BRANCH WILL OFFER; LIST THE MAJOR TYPES OF DEMAND
FOR LOANS; STATE WHETHER THE BRANCH WILL SERVE AS
TO RELIEVE OVERCROWDED LOBBY OR WORKING CONDITIONS
IN THE HEAD OFFICE OR CERTAIN BRANCHES, OR WILL IT
SERVE AS AN ADJUNCT TO ANY SUCH OFFICE OR BRANCHES.
INFORMATION GIVEN SHOULD MAKE CLEAR THE REASON WHY
THE BANK DESIRES TO ESTABLISH THE PROPOSED BRANCH.

See Appendix for description of various banking
services to be offered at this branch.

Since the General Service Area is predominantly
residential in nature, The Chase Manhattan Bank,
National Association, anticipates that the major
demand for loans will be in the home mortgage and
instalment loan categories. However, since there
are a number of retail and service outlets within
the trading area, the Bank also expects a smaller
amount of commercial loans.

The proposed branch is not planned to relieve the
Head Office or any of the present branches of
overcrowding but rather is intended to provide
the full range of banking services to this highly
affluent community of Nassau County.

EXCERPT FROM EXHIBIT A TO GERBER AFFIDAVIT - COMPTROLLER
OF THE CURRENCY ADMINISTRATIVE FILE--MARKET ANALYSIS IN
SUPPORT OF APPLICATION

A Chase Manhattan branch located on Birch Hill Road will not only serve the Locust Valley area, but will be within a five to ten minute drive of the affluent communities of Lattingtown, Mill Neck, and Matinecock. The residents of these areas, whose average family income is over \$20,000 per year, will be able to easily avail themselves of the banking services offered by The Chase Manhattan Bank, N.A.

Our branch will be conveniently located near the only supermarket in Locust Valley - Gristedes Supermarket with 6 checkouts. This shopping center is the most active retail sector in the General Service Area and exposure to motorists plus ease of accessibility will add to the attractiveness of Chase in the community. It should also be noted that The Chase Manhattan Bank has no representation in this part of the North Shore of Long Island. Our closest branch is the Roslyn office located over seven miles away, but a Locust Valley office could attract Chase customers living two miles away in Bayville (population 6,147), two miles away in

EXCERPT FROM EXHIBIT A TO GERBER AFFIDAVIT - COMPTROLLER
OF THE CURRENCY ADMINISTRATIVE FILE--MARKET ANALYSIS IN
SUPPORT OF APPLICATION

Glen Cove (population 25,770), or three miles
away in Oyster Bay (population 6,822).

Consequently, it is the intention of The Chase
Manhattan Bank, N.A. to offer shoppers the
convenience of a full service commercial bank
and assist in the continuing economic growth of
the Locust Valley Area.

6. STATE DISTANCE AND GEOGRAPHICAL DIRECTION OF THE
HEAD OFFICE FROM THE PROPOSED BRANCH.

The Head Office at 1 Chase Manhattan Plaza is
located 29.00 miles Southwest of the proposed
site.

CONFIDENTIAL

PROVIDE THE FOLLOWING INFORMATION WITH RESPECT TO OTHER BRANCHES OF THE APPLICANT BANK LOCATED WITHIN THE SERVICE AREA OF THE PROPOSED BRANCH. DESCRIBE GEOGRAPHICAL BARRIERS, IF ANY. IF DEPOSITS AND LOANS ARE NOT SEGREGATED, PROVIDE INFORMATION BASED UPON THE BANK'S MOST RECENT TABULATION OR ESTIMATE INDICATING DATE THEREOF AND (E) IF ESTIMATED.

There are no Chase Manhattan Bank, National Association branches located within the trading area boundaries. The nearest Chase Manhattan branch is:

<u>Location marker number, names and addresses</u>	<u>Date established if within three years</u>	<u>As of June 30, 1974</u>	<u>Distance by road mileage and direction from proposed branch</u>
		<u>Deposits</u>	<u>Loans</u>

The Chase Manhattan Bank, N.A.
Head Office: 1 Chase Manhattan Plaza,
New York City

Roslyn Branch
49 Bryant Avenue,
Roslyn, Nassau County

4-11-72

7.85 miles Southwest

CONFIDENTIAL

EXCERPT FROM EXHIBIT A TO GERBER AFFIDAVIT - COMPTROLLER A-81
OF THE CURRENCY ADMINISTRATIVE FILE--MARKET ANALYSIS IN
SUPPORT OF APPLICATION

8. PROVIDE THE FOLLOWING INFORMATION WITH RESPECT TO COMPETITIVE BANKS AND BRANCHES LOCATED WITHIN THE SERVICE AREA OF THE PROPOSED BRANCH (IF COMPLETE BRANCH FIGURES ARE NOT AVAILABLE, USE CONSOLIDATED FIGURES). IF NONPAR, SO INDICATE.

Location marker number, names and addresses	Date established if within three years	As of Dec. 31, 1973		Distance by road mileage and direction from proposed branch
		Deposits	Loans	
Hempstead Bank Head Office: 40 Main Street, Hempstead		\$180,489M	\$101,315M	
1- Matinecock Office 63 Forest Avenue, Locust Valley, Nassau	Not Applicable			0.28 miles South
2- *Bayville Village Office 282 Bayville Avenue, Bayville, Nassau	Not Applicable			2.73 miles Northeast
Nassau Trust Company Head Office: 9-13 Glen Street, Glen Cove		\$102,697M	\$ 72,887M	
3- Locust Valley Branch 147 Forest Avenue, Locust Valley, Nassau	Not Applicable			0.48 miles South

*Located outside the General Service Area, but included on accompanying map.

9. PROVIDE HANDY-SIZED DUPLICATE MAPS.

See Appendix

10. PROVIDE THE FOLLOWING INFORMATION WITH RESPECT TO SAVINGS AND LOAN, BUILDING AND LOAN,
 AND MUTUAL SAVINGS BANKS LOCATED WITHIN THE PROPOSED SERVICE AREA.

Location marker number, names and addresses	Date established if within three years	As of Dec. 31, 1973 Deposits	Loans	Distance by road mileage and direction from proposed branch
Prudential Savings Bank Head Office: 390 Avenue of the Americas, New York City		\$565,619M	\$501,153M	
4- Locust Valley Office 200 Birch Hill Road, Locust Valley, Nassau	Not Applicable			0.05 miles North

EXCERPT FROM EXHIBIT A TO GERBER AFFIDAVIT - COMPTROLLER
OF THE CURRENCY ADMINISTRATIVE FILE--MARKET ANALYSIS IN
SUPPORT OF APPLICATION

11. INDICATE THE NUMBER OF THE FOLLOWING INSTITUTIONS
WITHIN THE PROPOSED SERVICE AREA THREE YEARS AGO
AND THE NUMBER OF EACH AT THE PRESENT: CREDIT
UNIONS, FINANCE COMPANIES, INSURANCE COMPANIES
GRANTING LOANS, AND OTHER INSTITUTIONS GRANTING
LOANS.

Three years ago, as well as today, there are no
such institutions located within the General
Service Area.

12. INDICATE DEGREE OF INTENSITY OF COMPETITION IN
SERVICE AREA BY SAVINGS AND LOAN, MUTUAL SAVINGS
BANKS, CREDIT BANKS, ETC.

The only savings institution within the General
Service Area is the Prudential Savings Bank,
located approximately 260 feet north of the
proposed Chase branch. Therefore, due to its
close proximity to our site, it is anticipated
that this institution will compete to a high
degree with Chase in regard to time deposits.
However, as this Chase branch will offer a
wide variety of banking services, it is felt
that competitive conditions will be favorable.

13. PROVIDE A COPY OF ANY SURVEY MADE PRELIMINARY TO
FILING THE BANK'S APPLICATION FOR THE PROPOSED
BRANCH AND ALSO THE COST FOR ANY SUCH SURVEY.

Since no independent survey has been made of the
area, the above question does not apply.

EXCERPT FROM EXHIBIT A TO GERBER AFFIDAVIT - COMPTROLLER
OF THE CURRENCY ADMINISTRATIVE FILE--MARKET ANALYSIS IN
SUPPORT OF APPLICATION

14. COMMENT ON THE ECONOMIC CHARACTER OF THE AREA TO
BE SERVED.

- A. IF AREA IS LARGELY RESIDENTIAL, STATE WHETHER
HOMES ARE GENERALLY OWNER-OCCUPIED, THE EXTENT OF
HOUSING DEVELOPMENT, TYPE, QUALITY, PRICE LEVEL,
AVERAGE AGE, NUMBER OF UNSOLD NEW HOMES, AND
PROSPECT FOR CONTINUED DEVELOPMENT.

The General Service Area can be characterized as
chiefly residential and is composed of approximately
2,290 families earning a gross income of \$45,800M.
Present average family income for the community is
approximately \$20,000 per year.

The trading area consists mainly of one-family
homes, 97.7% of which are in sound condition and
with an average value of \$40,704. As of 1970,
there were 2,882 housing units, 79.3% of which
were owner-occupied, 18.6% were renter-occupied,
and 2.1% were vacant. The majority of homes were
built prior to 1950 and as indicated by the
population statistics, the area has reached
residential maturity.

The General Service Area contains a combination
of ranch-type homes and large estates located to
the north and east of the Chase site. Most of
the homes are situated along Forest Avenue,

EXCERPT FROM EXHIBIT A TO GERBER AFFIDAVIT - COMPTROLLER
OF THE CURRENCY ADMINISTRATIVE FILE--MARKET ANALYSIS IN
SUPPORT OF APPLICATION

Buckram Road and Birch Hill Road, and a large housing development is five minutes south of the site between Duck Pond Road and Frost Pond Road. This development, known as South Ridge, contains 250 ranch-type and colonial homes ranging in price from \$40,000 - \$60,000.

The Village of Locust Valley and surrounding communities can be considered high-income, affluent areas and the homes are among the finest on the North Shore of Long Island. It should also be noted that many business executives live in this area and commute to New York City via the Long Island Railroad. Consequently, Chase will be able to handle the financial needs of these men and their families near their place of residence.

- B. IF PRIMARILY INDUSTRIAL OR BUSINESS, STATE THE NUMBER AND GENERAL TYPES OF BUSINESS, AND IN THE CASES OF PRINCIPAL EMPLOYERS, GIVE THE NAME OF EACH COMPANY OR FIRM, NUMBER OF EMPLOYEES AND PAYROLL, AND COMMENT ON THE CONSISTENCY OF EMPLOYMENT AND SPECIAL SKILLS REQUIRED.

The General Service Area contains no industrial or business concerns.

EXCERPT FROM EXHIBIT A TO GERBER AFFIDAVIT - COMPTROLLER
OF THE CURRENCY ADMINISTRATIVE FILE--MARKET ANALYSIS IN
SUPPORT OF APPLICATION

- C. SHOPPING CENTER LOCATIONS SHOULD BE FULLY DESCRIBED. STATE THE NUMBER OF UNITS, SIZE AS TO TOTAL LAND AND BUILDING AREA, NUMBER OF INDIVIDUAL PARKING SPACES, ACCESSIBILITY TO SURROUNDING COMMUNITIES, THE EXTENT TO WHICH SIGNED LEASES HAVE BEEN OBTAINED, THE NAMES OF PRINCIPAL LESSEES, AND PROVIDE INFORMATION AS TO THE FINANCIAL RESPONSIBILITY, IF NOT NATIONAL CONCERNS.

The proposed Chase Manhattan branch will be located adjacent to the only shopping center in the trading area - the Birch Hill Shopping Center. Among the stores here are a Gristedes Supermarket, with 6 checkouts, 10 small retail outlets and a branch of the Prudential Savings Bank. From observations and interviews with residents of the area, it was learned that most people conduct their daily shopping at this center due to the fact that other retail centers are over two miles away in Glen Cove or Bayville.

There are also approximately 30 other small retail stores in the heart of Locust Valley at the intersection of Birch Hill Road and Forest Avenue. However, the majority of these are speciality shops and boutiques, but there is no supermarket or other large retail attractions in this area.

EXCERPT FROM EXHIBIT A TO GERBER AFFIDAVIT - COMPTROLLER
OF THE CURRENCY ADMINISTRATIVE FILE--MARKET ANALYSIS IN
SUPPORT OF APPLICATION

- D. PROVIDE INFORMATION REGARDING POPULATION GROWTH POTENTIAL; NEW BUSINESSES RECENTLY ESTABLISHED OR PLANNED, ETC. DISCUSS THE TRAFFIC PATTERNS, THE STREET AND ROAD FACILITIES, AND THEIR ADEQUACY. DESCRIBE GEOGRAPHICAL BARRIERS, IF ANY.

Since 1960, the population of the General Service Area has increased 18% and it is felt that future growth will be minimal. The lack of available land and strict zoning requirements which preclude any multiple dwelling construction limit the growth potential of this area.

The only new businesses planned for the trading area will be located in an office building (currently under construction) located on Forest Avenue, adjacent to the Hempstead Bank. However, tenants of this building are not known at this time.

The Locust Valley community is chiefly automobile oriented, however, the Long Island Railroad runs through the service area providing commuter transportation with stops at Mill Neck and Locust Valley. The major thoroughfares are Forest Avenue and Birch Hill Road (which becomes Piping Rock Road to the south), and the flow of traffic is

EXCERPT FROM EXHIBIT A TO GERBER AFFIDAVIT - COMPTROLLER
OF THE CURRENCY ADMINISTRATIVE FILE--MARKET ANALYSIS IN
SUPPORT OF APPLICATION

from Glen Cove to the west and Brookville to the south. The proposed Chase branch will offer excellent exposure and accessibility to motorists who wish to shop and bank at this active retail strip.

The only geographical barrier in the area is the Long Island Sound which forms the northern boundary of the General Service Area.

- 15.A. PROVIDE ESTIMATES OF DEPOSITS AND LOANS NOW HELD IN THE HEAD OFFICE OR OTHER BRANCHES, ORIGINATING IN THE AREA TO BE SERVED BY THE PROPOSED BRANCH; PROVIDE ESTIMATES OF DEPOSITS AND LOANS WHICH THE PROPOSED BRANCH MAY HOLD AT THE END OF ONE YEAR AND AT THE END OF THREE YEARS' OPERATIONS.

Any Chase Manhattan Bank, National Association business originating from residents of the Locust Valley trading area would be contained at the nearest branch - Roslyn. However, since this branch is over seven miles away, it is felt that there is no significant existing business originating in the Locust Valley General Service Area.

Projections For The Proposed Branch:

	<u>1st Year</u>	<u>3rd Year</u>
Total Deposits	\$1,800M	\$4,000M
Total Loans	\$ 200M	\$1,000M

EXCERPT FROM EXHIBIT A TO GERBER AFFIDAVIT - COMPTROLLER
OF THE CURRENCY ADMINISTRATIVE FILE--MARKET ANALYSIS IN
SUPPORT OF APPLICATION

B. INDICATE METHOD USED IN ARRIVING AT ESTIMATES.

These projections are based upon comparisons with existing Chase Manhattan Bank, National Association branches serving a similiar market.

16. TO WHAT EXTENT WILL THE PROPOSED BRANCH ENABLE THE BANK TO MORE EFFICIENTLY SERVE EXISTING BUSINESS. COMMENT FULLY IF THE BANK IS LOSING BUSINESS WHICH COULD BE RECOUPED OR RETAINED THROUGH THE ESTABLISHMENT OF THE PROPOSED BRANCH.

Since the closest Chase branch is over seven miles away, it is felt that there is no existing business originating in the General Service Area of the proposed branch. By establishing a branch at the proposed location, our Bank can play an important role in fulfilling the increasing need of this community for another full service banking facility and the convenience of one-stop shopping and banking.

17. A DETAILED PROJECTION OF EARNINGS AND EXPENSES MUST BE SUBMITTED SHOWING THE BREAKDOWN OF INCOME AND EXPENSES FOR EACH OF THE FIRST THREE YEARS OF OPERATIONS.

See Appendix.

EXCERPT FROM EXHIBIT A TO GERBER AFFIDAVIT - COMPTROLLER
OF THE CURRENCY ADMINISTRATIVE FILE--MARKET ANALYSIS IN
SUPPORT OF APPLICATION

18. GIVE THE FOLLOWING INFORMATION REGARDING BRANCH
BANKING HOUSE AND EQUIPMENT AS IT APPLIES:

- (a) IF TO BE PURCHASED, THE SEPARATE COSTS OF
LAND, BUILDING, FURNITURE AND FIXTURES,
AND VAULT.

See Appendix.

- (b) IF TO BE LEASED, GIVE TERMS IN BRIEF AND
DESCRIBE THE QUARTERS.

See Appendix.

- (c) IF PROPERTY IS TO BE PURCHASED OR LEASED
FROM A DIRECTOR, OFFICER, OR LARGE
SHAREHOLDER, STATE NAME AND OTHER PERTINENT
DATA.

Not Applicable.

- (d) GIVE EXPIRATION DATE OF ANY OPTION TO
PURCHASE OR LEASE.

The Bank has signed a letter of intent to
lease the property upon approval by the
Banking Authorities.

- (e) IF NEW CONSTRUCTION, FURNISH ANTICIPATED
COMPLETION DATE.

From six to nine months after the date of
approval by the Banking Authorities.

- (f) IF A TEMPORARY LOCATION IS PLANNED, FURNISH
EXACT ADDRESS, DISTANCE AND DIRECTION FROM
PERMANENT LOCATION, AND PERIOD IT WILL BE
OCCUPIED.

Not Applicable.

EXCERPT FROM EXHIBIT A TO GERBER AFFIDAVIT - COMPTROLLER
OF THE CURRENCY ADMINISTRATIVE FILE--MARKET ANALYSIS IN
SUPPORT OF APPLICATION

- (g) STATE THE APPROXIMATE PERIOD OF TIME THAT
WILL BE REQUIRED TO PLACE BRANCH IN OPERATION
IN TEMPORARY AND/OR PERMANENT SITE.

The branch will be able to begin operations
on approximately the date the construction
referred to in 18 (e) is completed.

EXCERPT FROM EXHIBIT A TO GERBER AFFIDAVIT - COMPTROLLER
OF THE CURRENCY ADMINISTRATIVE FILE--MARKET ANALYSIS IN
SUPPORT OF APPLICATION

BRANCH SITE

We have an agreement to lease a free standing building, received in shell condition, consisting of 1,640 square feet located on the East Side of Birch Hill Road between Lindbergh and Davis Streets, Locust Valley, Nassau County, New York. The lease will be for a 23 year period at the following annual rental terms:

\$11,890. per annum for the first 3 years
12,300. per annum for the next 5 years
13,120. per annum for the next 5 years
13,940. per annum for the last 10 years

The Bank will have two 10 year renewal options at rents to be agreed upon or arbitrated. We shall also be responsible for our proportionate share of real estate taxes which have been estimated to be \$2,400. annually. In addition, the Bank will pay a common area maintenance charge estimated to be \$350. per annum.

At this site we are prepared to offer drive-in facilities, plus the full range of services, including:

Regular Checking Accounts	Special Occasion Checks
Special Checking Accounts	Christmas Club
Savings Accounts	Personal Money Order Checks
Commercial Loans	Travelers Checks
Collections	Travelers Letters of Credit
Credit Information	Commercial Letters of Credit
Money Transfers - Remittances	Foreign Exchange
Personal Loans	Factoring
Small Business Loans	Credit Cards
Automobile Loans	Mortgage Loans
Home Improvement Loans	Safe Deposit
Night Depository	

EXCERPT FROM EXHIBIT A TO GERBER AFFIDAVIT - COMPTROLLER
OF THE CURRENCY ADMINISTRATIVE FILE--MARKET ANALYSIS IN
SUPPORT OF APPLICATION

Locust Valley, Nassau
County, New York

BRANCH SITE (CONT'D)

ESTIMATED COST OF CONSTRUCTION

General Construction	\$ 25,000.
Electrical	8,000.
Plumbing	5,500.
Heat, Ventilation & Air Conditioning	8,000.
Site Development	-0-
Cabinet Work	8,500.
Protection & Telephone	8,000.
Signs & Symbol	7,500.
Furniture & Furnishings	9,000.
Miscellaneous Charges	2,500.
Vault & Allied Equipment	26,000.
Architect & Engineer Fees	6,000.
Contingencies	<u>6,000.</u>
	\$120,000.

EXCERPT FROM EXHIBIT A TO GERBER AFFIDAVIT - COMPTROLLER A-94
OF THE CURRENCY ADMINISTRATIVE FILE--MARKET ANALYSIS IN
SUPPORT OF APPLICATION

LOCUST VALLEY
NASSAU COUNTY, NEW YORK

ESTIMATED DEPOSITS - INCOME AND EXPENSES OF PROPOSED BRANCH

	<u>FIRST YEAR</u>	<u>SECOND YEAR</u>	<u>THIRD YEAR</u>
TOTAL NEW DEPOSITS (NOT TRANSFERS) AT YEAR END	\$ 1,800,000	\$ 2,700,000	\$ 4,000,000
DEMAND.....	\$ 800,000	\$ 1,200,000	\$ 1,800,000
TIME.....	\$ 1,000,000	\$ 1,500,000	\$ 2,200,000
AVERAGE DEPOSITS (NORMALLY HALF OF GROWTH FROM YEAR TO YEAR PLUS PRECEDING YEAR'S BALANCE)...	\$ 900,000	\$ 2,250,000	\$ 3,350,000
GROSS INCOME ON AVERAGE DEPOSITS (BASED ON 5% OF GROSS EARNINGS TO AVERAGE DEPOSITS LAST YEAR RATE 7.5%).....	\$ 58,731	\$ 146,827	\$ 218,422
<u>OPERATING EXPENSES</u>			
<u>I. PERSONNEL</u>			
SALARIES OF OFFICERS.....(1).....	\$ 16,200	\$ 17,200	\$ 18,200
SALARIES OF EMPLOYEES.....(4,4,5)	\$ 34,900	\$ 36,500	\$ 45,900
PENSIONS.....	\$ 5,846	\$ 6,143	\$ 6,440
HOSPITALIZATION.....	\$ 225	\$ 225	\$ 225
GROUP INSURANCE.....	\$ 807	\$ 848	\$ 890
OTHER BENEFITS.....	\$ 7,940	\$ 8,356	\$ 8,771
TOTAL.....	\$ 65,918	\$ 69,272	\$ 67,426
<u>II. OCCUPANCY COSTS</u>			
ANNUAL RENTAL (PLUS OUR SHARE OF TAXES \$2750)	\$ 14,640	\$ 14,640	\$ 14,640
DEP'N. OF BANKING HOUSE (RATE 2.5%).....	\$ 1,163	\$ 1,163	\$ 1,163
DEP'N. OF F.&F. ETC.(RATE 5.0%).....	\$ 3,675	\$ 3,675	\$ 3,675
HEAT, LIGHT AND POWER.....	\$ 2,050	\$ 2,050	\$ 2,050
JANITOR, MAINTENANCE, REPAIRS, ETC.....	\$ 3,000	\$ 3,000	\$ 3,000
INSURANCE (ALL TYPES).....	\$ 500	\$ 500	\$ 500
REAL ESTATE TAXES.....	\$ 0	\$ 0	\$ 0
MISCELLANEOUS.....	\$ 3,000	\$ 3,000	\$ 3,000
GROSS OCCUPANCY COSTS.....	\$ 28,028	\$ 28,028	\$ 28,028
<u>III. MAIN OFFICE OVERHEAD (E.G. EXECUTIVE SUPERVISION, AUDITING, BOOKKEEPING, INVESTMENTS, CREDIT ANALYSIS, ETC.).....</u>			
	\$ 2,250	\$ 5,625	\$ 8,375
<u>IV. DEPOSITS</u>			
F.D.I.C. INSURANCE PREMIUM.....	\$ 360	\$ 900	\$ 1,340
INTEREST ON TIME DEPOSITS (5.0 %).....	\$ 25,000	\$ 62,500	\$ 92,500
TOTAL.....	\$ 25,360	\$ 63,400	\$ 93,840
<u>V. MISCELLANEOUS</u>			
ADVERTISING (INCLUDING INITIAL PROMOTIONAL COST).....	\$ 3,000	\$ 3,000	\$ 3,000
STATIONERY, POSTAGE, ETC.....	\$ 1,000	\$ 1,000	\$ 1,000
OTHER.....	\$ 1,000	\$ 1,000	\$ 1,000
TOTAL.....	\$ 5,000	\$ 5,000	\$ 5,000
TOTAL OPERATING EXPENSES.....	\$ 126,556	\$ 171,325	\$ 215,669
NET OPERATING EARNINGS (LOSS) BEFORE TAXES..	\$ (67,825)	\$ (24,498)	\$ 2,753
<u>LESS: TAXES</u>			
CORPORATE.....	\$ (32,556)	\$ (11,759)	\$ 1,321
FRANCHISE.....	\$ (2,612)	\$ (944)	\$ 106
TOTAL.....	\$ (35,168)	\$ (12,703)	\$ 1,427
NET OPERATING EARNINGS (LOSS) AFTER TAXES...	\$ (32,657)	\$ (11,795)	\$ 1,326

APPROXIMATE BREAK-EVEN DATE. 3RD YEAR - 3RD QUARTER

EXCERPT FROM EXHIBIT A TO GERBER AFFIDAVIT - COMPTROLLER
OF THE CURRENCY ADMINISTRATIVE FILE--AREA MAP

AREA MAP

EXCERPT FROM EXHIBIT A TO GERBER AFFIDAVIT - COMPTROLLER
OF THE CURRENCY ADMINISTRATIVE FILE--AREA MAPLEGEND

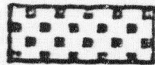
CHASE MANHATTAN BANK, N.A. PROPOSED SITE



General Service Area Boundaries



Major Arteries



Commercial Areas

COMPETITION

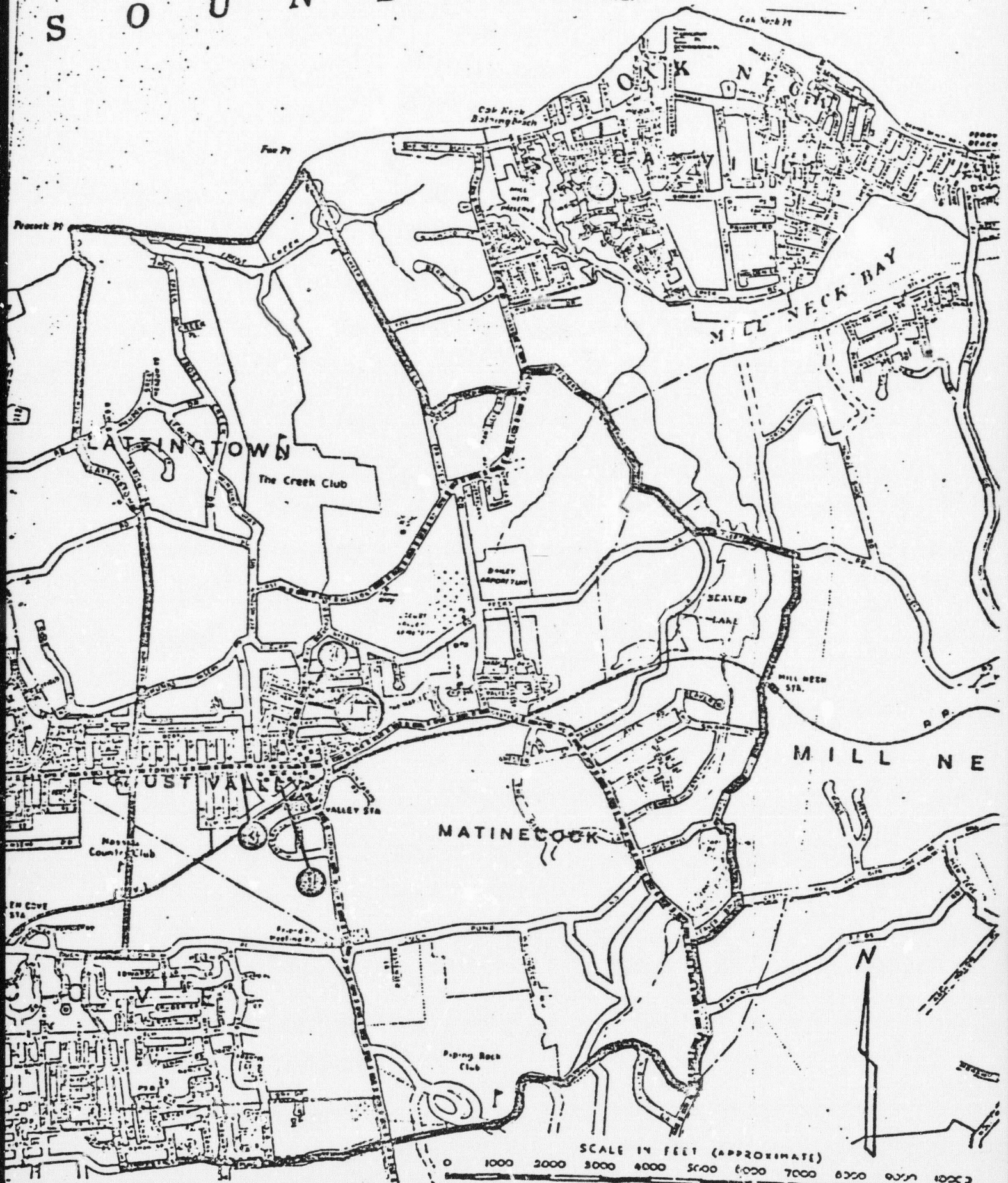
1. Hempstead Bank
2. Hempstead Bank
3. Nassau Trust Company
4. Prudential Savings Bank

DISTANCE & DIRECTION

0.23 miles South
2.73 miles Northeast
0.48 miles South
0.05 miles North

Nearest Chase Manhattan Bank, N.A. Branch
Roslyn Branch #309
49 Bryant Avenue,
Roslyn, Nassau County, New York

7.85 miles Southwest

EXCERPT FROM EXHIBIT A TO GERBER AFFIDAVIT - COMPTROLLER
OF THE CURRENCY ADMINISTRATIVE FILE--AREA MAP

STATEMENT OF MATERIAL FACTS AS TO WHICH THERE A-98
IS NO GENUINE ISSUE (7/10/75) SUBMITTED BY U.S.
ATTORNEY IN SUPPORT OF MOTION FOR SUMMARY
JUDGMENT
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
-----X

HEMPSTEAD BANK, : 75 Civ. 171 (LFM)
Plaintiff, :
-v- :
JAMES E. SMITH, Comptroller :
of the Currency of the :
United States and THE CHASE :
MANHATTAN BANK, NATIONAL :
ASSOCIATION, :
Defendants. :

-----X
STATEMENT OF MATERIAL FACTS AS
TO WHICH THERE IS NOT GENUINE
ISSUE

Pursuant to Rule 9(g) of the General rules of
the United States District Court for the Southern District
of New York defendant James E. Smith, Comptroller of the
Currency of the United States (the "Comptroller"), submits
the following statement of material facts as to which he
contends there is no genuine issue:

(1) On October 8, 1974, the Comptroller pursuant
to the provisions of the National Bank Act, 12 U.S.C. § 36
(C), approved an application of The Chase Manhattan Bank
("Chase"), New York, New York, to establish a branch at
Birch Hill Road, Locust Valley, New York.

(2) The Comptroller's decision to approve the
application was based upon facts and opinions contained in
the Administrative Record, a certified copy of which is
annexed to the Affidavit of Nathaniel L. Gerber as Exhibit
A. This Record is the source of subsequent material facts
contained in this statement.*

* References to this certified Administrative Record are
hereinafter marked "A.R., p. ____."

STATEMENT OF MATERIAL FACTS AS TO WHICH THERE IS NO GENUINE ISSUE (7/10/75) SUBMITTED BY U.S. ATTORNEY IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT A-99

M-432

(3) Chase filed its application with the Comptroller for permission to establish a branch on the east side of Birch Hill Road between Lindbergh and Davis Streets, Locust Valley, Nassau County, New York, on August 6, 1974 (A.R., p. 51, et seq.) Among the reasons cited by Chase in support of its application were the following (A.R., pp. 59, 60, 66, 67):

The proposed branch is * * * intended to provide the full range of banking services to this highly affluent community of Nassau County.

* * * *

Since the General Service Area* is predominately residential in nature, the Chase Manhattan Bank, National Association, anticipates that the major demand for loans will be in the home mortgage and installment loan categories. However, since there are a number of retail and service outlets within the trading area, the bank also expects a smaller amount of commercial loans.

* * * *

A Chase Manhattan branch located on Birch Hill Road will not only serve the Locust Valley area, but will be within a five to ten minute drive of the affluent communities of Lattingtown, Mill Neck, and Matinecock. The residents of these areas, whose average family income is over \$20,000 per year, will be able to easily avail themselves of the banking services offered by The Chase Manhattan Bank, N.A.

Our branch will be conveniently located near the only supermarket in Locust Valley -- Gristedes Supermarket with 6 checkouts. This shopping center is the most active retail sector in the General Service Area and exposure to motorists plus ease of accessibility will add to the attractiveness of Chase in the community.

* General Service Area is a functional term describing the area from which a bank branch generates 75% or more of its loans and deposits.

STATEMENT OF MATERIAL FACTS AS TO WHICH THERE IS NO GENUINE ISSUE (7/10/75) SUBMITTED BY U.S. ATTORNEY IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT A-100

M-432

It should also be noted that The Chase Manhattan Bank has no representation in this part of the North Shore of Long Island. Our closest branch is the Roslyn office located over seven miles away, but a Locust Valley office could attract Chase customers living two miles away in Bayville (population 6,147), two miles away in Glen Cove (population 25,770), or three miles away in Oyster Bay (population 6,822). Consequently, it is the intention of The Chase Manhattan Bank, N.A. to offer shoppers the convenience of a full service commercial bank and assist in the continuing economic growth of the Locust Valley Area.

* * *

The trading area consists mainly of one-family homes, 97.7% of which are in sound condition and with an average value of \$40,704. As of 1970, there were 2,882 housing units, 79.3% of which were owned-occupied, 18.6% were renter-occupied, and 2.1% were vacant. The majority of homes were built prior to 1950 and as indicated by the population statistics, the area has reached residential maturity.

The General Service Area contains a combination of ranch-type homes and large estates located to the north and east of the Chase site. Most of the homes are situated along Forest Avenue, Buckram Road and Birch Hill Road, and a large housing development is five minutes south of the site between Duck Pond Road and Frost Pond Road. This development, known as South Ridge, contains 250 ranch-type and colonial homes ranging in price from \$40,000 - \$60,000

The Village of Locust Valley and surrounding communities can be considered high-income, affluent areas and the homes are among the finest on the North Shore of Long Island. It should also be noted that many business executives live in this area and commute to New York City via the Long Island Railroad. Consequently, Chase will be able to handle the financial needs of these men and their families near their place of residence.

STATEMENT OF MATERIAL FACTS AS TO WHICH THERE A-101
IS NO GENUINE ISSUE (7/10/75) SUBMITTED BY U.S.
ATTORNEY IN SUPPORT OF MOTION FOR SUMMARY
JUDGMENT

(4) Notice of the filing of application was published in two local newspapers (A.R., pp. 47 and 49) and commencing August 26, 1974, a national bank examiner conducted an investigation of the application resulting in a written report filed with the Office of the Comptroller (A.R., pp. 6-19). A public file was established in the Comptroller's Regional Office in New York City, which contained copies of all information submitted in support of the application, all information submitted in opposition to the application and factual portions of the national bank examiner's investigation report submitted to the Comptroller (A.R., pp. 6-13, 25-50 and 51 et seq.).

(5) Protests to the application were filed with the Regional Administrator of the Second National Bank Region by two competing financial institutions located within the General Services Area ("GSA") Nassau Trust Company and plaintiff, Hempstead Bank. The protest of plaintiff Hempstead claimed that (A.R. 42):

[b]y any judgment or "bench marks" whether population, commerce or disposable income there is not only no demonstrable public need for additional banking facilities, but the addition of another banking office would certainly constitute over banking.

However, plaintiff did not dispute any of the facts set forth in the Chase application except for the boundaries of the correct GSA (A.R. 40, 41-5). Plaintiff asserted that the GSA was smaller than that projected by Chase and contained a population of only 7,730 persons rather than 10,150 as estimated by Chase (A.R., p. 58). Plaintiff conceded that among the communities contained within its projected GSA, the median income ranges from \$13,386 to

STATEMENT OF MATERIAL FACTS AS TO WHICH THERE A-102
IS NO GENUINE ISSUE (7/10/75) SUBMITTED BY U.S.
ATTORNEY IN SUPPORT OF MOTION FOR SUMMARY
JUDGMENT

75-0167
M-432

\$24,781 "which admittedly ranks the area high as compared with Nassau County as a whole" (A.R., p. 41).

(6) The report of the national bank examiner, submitted after his investigation and analysis of Chase's application, confirmed Chase's description of the GSA (A.R., pp. 6, 10, 16) as a residential community with a population just over 10,000 persons, an average family income of approximately \$20,000 per year (A.R., pp. 6, 10, 66, 67 and 68), and housing which consists mainly of single family dwellings, 98 percent of which are in excellent condition with an average value exceeding \$40,000 (A.R., pp. 10, 66, 67). The bank examiner also found that the proposed Chase branch would be located adjacent to the community's only shopping center -- "Birch Hill Shopping Center" (A.R., pp. 10, 68, 69).

(7) The Administrative Record was forwarded to the Comptroller's Office in Washington where it was first reviewed by various members of the staff and then submitted to the Comptroller for final disposition. These staff members made the following conclusions and comments after and upon their consideration of the information and findings in the Administrative Record.

(a) The investigating national bank examiner reported that: "[e]stablishment of [a] branch would add [a] competitive factor to [the] area. [It] would enable [the] bank to extend its facilities into [an] area not currently serviced by applicant. Affluence of [the] area would seem to indicate that it can support [the] proposed branch without causing greatly adverse conditions." (A.R., p. 4.)

BEST COPY AVAILABLE

STATEMENT OF MATERIAL FACTS AS TO WHICH THERE A-103
IS NO GENUINE ISSUE (7/10/75) SUBMITTED BY U.S.
ATTORNEY IN SUPPORT OF MOTION FOR SUMMARY
JUDGMENT

M-432

(b) The Regional Administrator, in concurring with the conclusions made by the investigating examiner, stated (A.R., p. 19):

I concur with the findings of the investigating examiner and recommend that the application of The Chase Manhattan Bank (National Association), New York, New York, for permission to establish a branch . . . be approved.

(c) The Director of the Comptroller's Bank Organization Division, after a review of the administrative file on the application concluded that Locust Valley was "[a] high quality residential area that can support added competition" and he recommended that the application be approved (A.R., p. 5).

(d) Deputy Comptroller of the Currency Blanchard also recommending approval of the application stated (A.R., p. 5):

This is a lucrative market in which applicant is not represented. Houses for the most part are single family and of quality construction. Entry will stimulate competition and can be supported by available business.

(8) As provided in Rule 4(d)(4) of the Federal Rules of Civil Procedure, to perfect service with respect to the Comptroller of the Currency of the United States, plaintiff was required to serve the United States Attorney, the Attorney General and the Comptroller of the Currency. Instead, plaintiff served the United States Attorney, the Attorney General and the Regional Administrator of National Banks, Second National Bank Region. The Comptroller has not designated any subordinate as agent for receiving service of process. Consequently, the Comptroller must be served at the Office of the Comptroller of the Currency in Washington, D. C.

STATEMENT OF MATERIAL FACTS AS TO WHICH THERE A-104
IS NO GENUINE ISSUE (7/10/75) SUBMITTED BY U.S.
ATTORNEY IN SUPPORT OF MOTION FOR SUMMARY
JUDGMENT

Dated: New York, New York

July 10, 1975

PAUL J. CURRAN
United States Attorney for the
Southern District of New York
Attorney for the Comptroller

By: *Nathaniel L. Gereer*
NATHANIEL L. GEREER
Assistant United States Attorney
Office and Post Office Address:
United States Courthouse Annex
One Saint Andrew's Plaza
New York, New York 10007
Telephone: (212) 791-1946

DEFENDANT, CHASE MANHATTAN BANK'S, NOTICE OF
MOTION FOR SUMMARY JUDGMENT

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

----- x

HEMPSTEAD BANK,

:

Plaintiff,

:

-against-

:

NOTICE OF MOTION

JAMES E. SMITH, Comptroller of the
Currency of the United States and
THE CHASE MANHATTAN BANK, NATIONAL
ASSOCIATION,

: 75 Civ. 171 (L.F.M.)

:

:

Defendants.

----- x

S I R S:

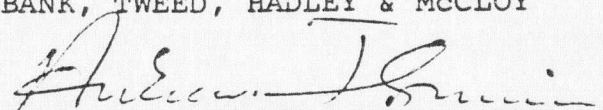
PLEASE TAKE NOTICE that upon the complaint, the answer of defendant The Chase Manhattan Bank, N.A. and the affidavit of Nathaniel L. Gerber, sworn to July 11, 1975, and submitted in support of the motion of defendant James E. Smith, Comptroller of the Currency of the United States, presently returnable on July 25, 1975, the undersigned will move this Court in Room 519 at the United States Courthouse, Foley Square, New York, N.Y., on July 25, 1975 at 2:15 P.M., or as soon thereafter as counsel can be heard for an order pursuant to FRCP 56, granting summary judgment dismissing the complaint and awarding such other and further relief as may be proper.

Dated: New York, N.Y.
July 15, 1975

Yours, etc.,

MILBANK, TWEED, HADLEY & McCLOY

By



A Member of the Firm

1 Chase Manhattan Plaza

New York, N.Y. 10005

Attorneys for defendant

The Chase Manhattan Bank, N.A.

DEFENDANT, CHASE MANHATTAN BANK'S, NOTICE OF
MOTION FOR SUMMARY JUDGMENT

TO:

GILBERT HENOCK, ESQ.
Dalton & Henoch
50 Clinton Street
Hempstead, N.Y. 11550
Attorney for plaintiff

NATHANIEL L. GERBER, ESQ.
Assistant United States Attorney
United States Courthouse Annex
One St. Andrew's Plaza
New York, N.Y. 10007

AFFIDAVIT OF ANDREW J. CONNICK, FOR DEFENDANT
CHASE MANHATTAN BANK, IN SUPPORT OF MOTIONS
UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

-----x

HEMPSTEAD BANK,

:

Plaintiff,

:

-against-

:

AFFIDAVIT

JAMES E. SMITH, Comptroller of the
Currency of the United States and
THE CHASE MANHATTAN BANK, NATIONAL
ASSOCIATION,

: 75 Civ. 171 (L.F.M.)

:

:

Defendants.

-----x

STATE OF NEW YORK)

: ss.:

COUNTY OF NEW YORK)

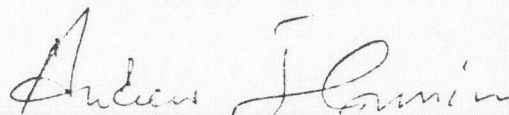
ANDREW J. CONNICK, being duly sworn, says:

1. I am a member of the firm of Milbank, Tweed, Hadley & McCloy, attorneys for defendant The Chase Manhattan Bank, N.A. ("Chase"). I am familiar with the pleadings in this action and make this affidavit in support of the motion of defendant Chase for an order granting summary judgment against plaintiff on the grounds (a) that there is no genuine issue of material fact and (b) that as the decision of the comptroller of the currency approving the application of Chase to establish a branch at Locust Valley, New York was valid and in accordance with all applicable provisions of law, Chase is entitled to judgment as a matter of law.

2. For the reasons set forth in the affidavit of Nathaniel L. Gerber, Esq., sworn to July 11, 1975, the Rule 9(g) statement submitted on behalf of defendant James E. Smith and the memorandum of law in support of defendant Smith's motion to dismiss or for summary judgment, we respectfully request this Court to

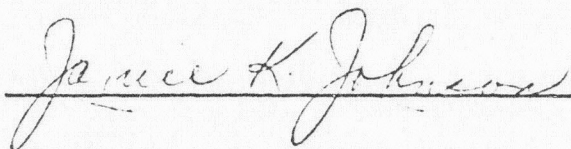
AFFIDAVIT OF ANDREW J. CONNICK, FOR DEFENDANT
CHASE MANHATTAN BANK, IN SUPPORT OF MOTIONS

enter an order granting summary judgment in favor of Chase.



Andrew J. Connick

Sworn to before me this
15th day of July, 1975.



JANICE K. JOHNSON
NOTARY PUBLIC, State of New York
No. 24-7098965
Qualified in Kings County
Cert. Filed in New York County
Commission Expires March 30, 1978

PLAINTIFF, HEMPSTEAD BANK'S, NOTICE OF CROSS-
MOTION FOR SUMMARY JUDGMENT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

COPY

-----X
HEMPSTEAD BANK.

Plaintiff

-against-

NOTICE OF MOTION

JAMES E. SMITH, Comptroller of the
Currency of the United States, and
CHASE MANHATTAN BANK, a National
Association,

75 Civ. 171 (L.F.M.)

Defendants
-----X

S I R S :

PLEASE TAKE NOTICE that upon the pleadings and
affidavits of GILBERT HENOC and CURTIS F. VELSOR, sworn to
August 19, 1975, and the affidavit of IVAN LEVINE, sworn to
August 4, 1975, the undersigned will cross-move this Court
in Room 519 at the United States Courthouse, Foley Square,
New York, on September 19, 1975, at 2:15 o'clock in the after-
noon of that day or as soon thereafter as counsel can be heard
for an order pursuant to F.R.C.P. 56, granting summary judgment
in favor of the plaintiff for the relief set forth in the
complaint, and for such other and further relief as may be
proper.

Dated: Hempstead, New York,
August 20, 1975

DALTON & HENOC,

By: 5

A Member of the Firm
Attorneys for Plaintiff
50 Clinton Street,
Hempstead, N.Y. 11550

PLAINTIFF, HEMPSTEAD BANK'S, NOTICE OF CROSS-
MOTION FOR SUMMARY JUDGMENT

TO: PAUL J. CURRAN, United States
Attorney General,
NATHANIEL L. GERBER, Of Counsel
Attorney for Comptroller,
1 St. Andrew's Plaza, New York, N.Y.

MILBANK, TWEED, HADLEY & McCLOY, Esqs.,
Attorneys for Chase Manhattan Bank,
1 Chase Manhattan Plaza, New York, N.Y.

AFFIDAVIT OF GILBERT HENOCK, FOR PLAINTIFF
IN SUPPORT OF CROSS-MOTION AND IN OPPOSITION
TO MOTIONS

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X

HEMPSTEAD BANK,

Plaintiff,

-against-

JAMES E. SMITH, Comptroller of the
Currency of the United States and
THE CHASE MANHATTAN BANK, NATIONAL
ASSOCIATION,

A F F I D A V I T

75 Civ. 171 (L.F.M.)

Defendants

-----X

STATE OF NEW YORK)
COUNTY OF NASSAU) SS:

GILBERT HENOCK, being duly sworn, deposes
and says:

I am a member of the firm of DALTON & HENOCK,
attorneys for the plaintiff, HEMPSTEAD BANK.

I am familiar with the pleadings in this
action and I make this affidavit in support of plaintiff's
cross-motion for an order granting summary judgment in its favor
on the grounds (a) that there is no genuine issue of fact; and
(b) that the decision of the Comptroller of Currency approving
a branch office for CHASE MANHATTAN BANK in Locust Valley, was
invalid since it did not comply with the requirements of the New
York State Banking Law and the General Regulations of the New

AFFIDAVIT OF GILBERT HENOCK, FOR PLAINTIFF,
IN SUPPORT OF CROSS-MOTION AND IN OPPOSITION
TO MOTIONS

York State Banking Board, all of which are binding upon the Comptroller under well settled principles of law.

This affidavit is also submitted in opposition to the motion of the defendants to dismiss the complaint.

The Comptroller asserts that the action should be dismissed because of improper service. He admits that the plaintiff served the United States Attorney, the Attorney General and the Regional Administrator of National Bank, Second National Bank Region, New York City, with a copy of the summons and complaint but asserts that the Comptroller should have been served in Washington.

Prior to institution of this action, my associate, Richard Lipman, spoke to Mr. Nathan, the attorney for the Regional Administrator, who advised that the Regional Administrator could properly be served on behalf of the Comptroller. Relying on this information we directed the United States Marshal to serve the Regional Administrator.

Since we had received such advice from the counsel to the Regional Administrator, the Comptroller should be estopped from now asserting that he was not properly served. In any event he fails to show how service that was made has jeopardized him or deprived him of an opportunity to properly defend this action.

Shortly after these government officials were served I received a telephone call from Nathaniel Gerber, Assistant U.S. Attorney and another official, who advised me that the

AFFIDAVIT OF GILBERT HENOCH, FOR PLAINTIFF,
IN SUPPORT OF CROSS-MOTION AND IN OPPOSITION
TO MOTIONS

record was being assembled and that additional time was needed. Two extensions of time to answer were requested by the Assistant U. S. Attorney, which were agreed to by your deponent as a matter of the customary professional courtesy.

The U. S. Attorney has obviously devoted considerable time and effort to the preparation of his defense, including preparation of a comprehensive Brief and the issue should be decided on the merits rather than on the ground of some technical defect in the service of the summons and complaint.

The Administrative records of the Comptroller submitted in support of his motion to dismiss is significant in what it contains and what it does not contain. Much of the "Report of Investigation" prepared by the Comptroller's subordinates is a reiteration, some of it in haec verba of material from Chase's application. The reasons for the Comptroller's subordinates recommending approval can be summarized as "Applicant [Chase] is not represented [here] (AR 5); the branch would enable Chase "to extend its facilities into [an] area not currently serviced by applicant" (AR 4) and the area can support "added competition" (AR 5).

Yet, nowhere in the record did the Comptroller's subordinates find that the area needed more competition or that more competition would serve the public weal or eliminate monopolistic practices found to exist among existing banks or

AFFIDAVIT OF GILBERT HENoch, FOR PLAINTIFF,
IN SUPPORT OF CROSS-MOTION AND IN OPPOSITION
TO MOTIONS

eliminate collusive pricing. Such practices were not found and hence the new branch was not intended to eliminate such practices. The approval seems premised on the fact that additional competition is good per se but disregards the fact that too much competition can be destructive to all participants, especially in an area in which there is no anticipated growth. Obviously, with the amount of banking business remaining static and the bank dividing with another competitor, each bank's income will decline while expenses remain fairly constant.

Although New York law requires a finding that the public convenience and advantage will be served by the new branch, and such requirement is binding on the Comptroller by virtue of the National Bank Act §36(c), nowhere in the file did he make any such findings and as set forth in plaintiff's accompanying Brief, such a deficiency requires his decision to be annulled.

Attached hereto is an affidavit of IVAN LEVINE indicating the actual population in the service area; to determine the median family income in these areas I consulted the 1970 U.S. Census. Parts of Census tracts 5178.01, 5178.02, 5173 and 5176 fall within the service area. The median family income of each tract and its ranking in the County as shown in the Census are as follows:

AFFIDAVIT OF GILBERT HENOCH, FOR PLAINTIFF,
IN SUPPORT OF CROSS-MOTION AND IN OPPOSITION
TO MOTIONS

<u>Tract</u>	<u>Median Income</u>	<u>Rank in County</u>
5178.01	\$24,781.00	23
5176	14,203.00	136
5178.02	13,386.00	176
5173	12,807.00	205

A copy of the table containing these figures is attached hereto as Exhibit "A".

These statistics demonstrate that while the population of tract 5178.01 has above average income, all the other areas are distinctly below average. As set forth in the accompanying Brief, the Comptroller's decision has omitted the necessary findings required under New York Banking Law §29 which deficiency has been found fatal to Comptroller's decisions by other United States District Courts.

Similarly, the Comptroller's decision has violated the population ratios set forth in the Regulations of the Banking Board.

For these reasons and under the applicable principles set out in the Brief, I respectfully request this Court to enter an order granting summary judgment in favor of plaintiff, annulling the decision of the Comptroller.

Sworn to before me this

19 day of August, 1975

S/
Gilbert Henoch

BARBARA BOYD
NOTARY PUBLIC, State of New York
No. 82-540222
Qualified in New York County
Term Expires March 30, 1976

AFFIDAVIT OF CURTIS F. VELSOR, FOR PLAINTIFF,
IN SUPPORT OF CROSS-MOTION AND IN OPPOSITION
TO MOTIONS

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
HEMPSTEAD BANK,

Plaintiff,

-against-

A F F I D A V I T

JAMES E. SMITH, Comptroller of the
Currency of the United States, and
CHASE MANHATTAN BANK, a National
Association,

Defendants
-----X

STATE OF NEW YORK)
COUNTY OF NASSAU)SS:

CURTIS F. VELSOR, being duly sworn, deposes
and says:

I am vice president of HEMPSTEAD BANK and
I make this affidavit in opposition to the defendants' motion
to dismiss the complaint and also in support of plaintiff's
motion for summary judgment.

Plaintiff is a commercial bank operating
twenty-eight branches in Nassau and Suffolk Counties, with
total assets of over \$206,000,000. Plaintiff offers its customers
a full range of commercial bank services through its branches
including commercial and personal loans, checking and savings
accounts and certificates, domestic and foreign letters of
credit, accounts receivable, payroll services, trust and other
fidiciary services.

AFFIDAVIT OF CURTIS F. VELSOR, FOR PLAINTIFF,
IN SUPPORT OF CROSS-MOTION AND IN OPPOSITION
TO MOTIONS

Plaintiff maintains a branch office in Locust Valley as does another strong commercial bank, Nassau Trust Company.

As a result of competition between these two banks, as well as with other competing commercial banks in the nearby communities of Glen Cove, Bayville and Oyster Bay, all services are priced competitively. In addition, there is a branch office of a New York City savings bank, The Prudential Savings Bank, in Locust Valley and branch offices of other savings banks and savings and loan associations are also located in surrounding areas.

Despite this profusion of banking offices there is little likelihood of population growth in this service area. Glen Cove and Locust Valley are thoroughly built up with residential and commercial development and the area of Matinecock, Lattingtown and Mill Neck are over restrictive in their residential zoning requiring between two to five acres for a one-family house.

The result of this static growth and increased banking competition in recent years have caused plaintiff's deposits in this Locust Valley branch, despite aggressive marketing, to have remained static and even decline.

The public is thus being adequately and competitively served. Nowhere in Chase's application does it indicate that it will offer any additional services; rather, it

AFFIDAVIT OF CURTIS F. VELSOR, FOR PLAINTIFF,
IN SUPPORT OF CROSS-MOTION AND IN OPPOSITION
TO MOTIONS

simply states that Chase "has no representation in this part of the North Shore of Long Island" and that a Chase office here would be more convenient for present Chase customers residing in the vicinity (AR 60). While the Chase application rather optimistically spoke of "an increasing need of this community" for another bank (AR 71), actually our experience has shown lack of growth in the area and the Comptroller's subordinates have reached the same conclusion (AR10).

Accordingly, your deponent submits that Chase has demonstrated no need for an additional bank in this area and there is none and any deposits and loans which Chase may develop here will come at the expense of the existing banks. The considerable competition already existing between the financial institutions already in the area prevent any monopoly of services. The public is already receiving a full range of services at competing prices and the Comptroller's subordinates did not find to the contrary.

WHEREFORE, your deponent respectfully submits that defendants' motions should be denied and plaintiff motion for summary judgment granted.

Sworn to before me this
day of August, 1975.

151

Curtis F. Velsor

AFFIDAVIT OF IVAN LEVINE, FOR PLAINTIFF, IN
SUPPORT OF CROSS-MOTION AND IN OPPOSITION TO
MOTIONS

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
HEMPSTEAD BANK,

Plaintiff,

-against-

JAMES E. SMITH, COMPTROLLER OF THE
CURRENCY OF THE UNITED STATES and
CHASE MANHATTAN BANK, National
Association,

AFFIDAVIT

75 Civ. 171

Defendants
-----X

STATE OF NEW YORK)
COUNTY OF NASSAU) SS:

IVAN LEVINE, being duly sworn, deposes

and says:

I am the president of Creative Contacts,
Inc., a corporation engaged in market research, having its
principal office at 20 Miller Place, Syosset, New York, and I
make this affidavit at the request of plaintiff, Hempstead
Bank, in opposition to the motion of the defendants to dismiss
the complaint.

I have Bachelor's and Master's college
degrees in Research and English. For the past seven years
I have been researching and preparing studies in connection
with proposed bank branches and proposed real estate develop-
ment and financing concerning financial feasibility, real estate

AFFIDAVIT OF IVAN LEVINE, FOR PLAINTIFF, IN
SUPPORT OF CROSS-MOTION AND IN OPPOSITION TO
MOTIONS

research and demographic influences. I have prepared studies in connection with approximately thirty applications for branch banks and proposed bank mergers.

In late 1974 I was retained by Hempstead Bank to ascertain the actual population residing in the service area which was mapped by Chase Manhattan Bank in connection with their proposed branch office in Locust Valley. The application submitted by Chase Manhattan Bank gave the following population estimates for the service area:

1970 census	-	9,950
1974 estimate		10,150

For the purpose of verifying these figures we consulted the U. S. Department of Commerce Census Bureau map. On such map portions of four census tracts are found in the service area. We selected from each census tract the actual blocks, which are in the service area and computed from said census the actual population residing there. Copy of our calculations from the 1970 census is attached hereto. This indicates that the actual service area population from the 1970 census was 8,768. There has been no interim census conducted since 1970.

To further verify the resident population we consulted Island Long/Lighting Company which advised us that based upon their active residential electric meter records, they believed the

AFFIDAVIT OF IVAN LEVINE, FOR PLAINTIFF, IN
SUPPORT OF CROSS-MOTION AND IN OPPOSITION TO
MOTIONS

service area in 1970 to have contained a population of 8,932 people.

In my opinion since the population figures arrived at through these two methods have some variation, the proper method to arrive at a more accurate population figure would be to average them. The average figure for 1970 population in the service area thus, would be 8,850. Long Island Lighting Company further indicated from ^{their} records on January 1, 1974, the service area contained approximately 9,669 people. Since there are no census figures available for 1974, our estimate for the service area population for 1974 is in accord with the Long Island Lighting figures, i.e., 9669.

Sworn to before me this

Ivan Levine
Ivan Levine

4 day of August, 1975

BARBARA L. LEVINE
NOTARY PUBLIC, State of New York
30 - 751 - 0450
NASSAU CO. NY
~~Commission~~ Expires March 30, 1976

Barbara L. Levine

EXHIBIT "A" TO CROSS-MOTION - CALCULATION
OF POPULATION BASED ON 1970 CENSUS

Population in Chase-Manhattan service area, Locust Valley office

1970 Census

<u>Census Tract Number</u>	<u>Block Number</u>	<u>Population</u>
5178.01	106 (50%)	40
"	111	26
"	110	76
"	105	4
"	104	79
"	107	14
"	108	32
"	109	87
"	115	122
"	116	139
"	118	27
"	119	-
"	120	24
"	121	27
"	117	92
"	122	42
"	123	52
"	103	136
"	205	22
"	204	270
"	201	3
"	203	54
"	208	-
"	209	7
"	114	-
"	302	29
"	303	-
"	304	45
"	305	17
"	310 (50%)	168
"	312	-
"	311	74
"	313	226
"	314	25
"	315	11
"	316	44
"	317	97
"	318	15
	Subtotal.....	2126
5178.02	309 (50%)	30
"	310	51
"	311	64
"	312	131
"	313	26
"	314	43
"	315	131
"	219 (75%)	17
"	215	17
"	216	37
"	217	66

EXHIBIT "A" TO CROSS-MOTION - CALCULATION
OF POPULATION BASED ON 1970 CENSUS

1970 Census

<u>Census Tract Number</u>	<u>Block Number</u>	<u>Population</u>
5178.02	218	38
"	213	62
"	212	35
"	207	166
"	208	67
"	210	96
"	211	52
"	206	61
"	205	224
"	204	168
"	202	-
"	201	37
"	203	109
"	117	273
"	119	31
"	115	46
"	116	107
"	109	53
"	110	28
"	111	73
"	112	67
"	113	23
"	114	35
"	108	18
"	101	-
"	102	74
"	103	227
"	104	36
"	105	57
"	106	98
"	107	154
	Subtotal.....	3128
5173	311 (50%)	98
"	404	84
"	403	214
"	402	97
"	201 (25%)	20
"	401	305
"	408	108
"	409	92
"	410	131
"	411	99
"	412	67
"	511	58
"	510	103
"	509	218
"	508	45
"	507	121
"	506	123
"	505	47
"	504	465

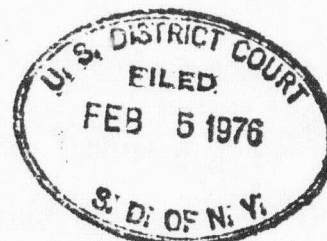
EXHIBIT "A" TO CROSS-MOTION - CALCULATION
OF POPULATION BASED ON 1970 CENSUS

. 1970 Census

<u>Census Tract Number</u>	<u>Block Number</u>	<u>Population</u>
5173	501	175
"	502	137
"	503	67
	Subtotal.....	2874
5176	110	22
"	109	15
"	108	2
"	103	64
"	104	39
"	107	83
"	106	82
"	105	96
"	102	184
"	101	53
	Subtotal.....	640
	GRAND TOTAL.....	8768

OPINION AND ORDER OF JUDGE L. F. MacMAHON
APPEALED FROM

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK



-----x
HEMPSTEAD BANK,

Plaintiff,

-against-

JAMES E. SMITH, Comptroller of
the Currency of the United
States, and THE CHASE MANHATTAN
BANK NATIONAL ASSOCIATION,

Defendants.
-----x

75 Civ. 171-LFM

OPINION

#43838

APPEARANCES:

Dalton & Henoch, Esqs.
50 Clinton Street
Hempstead, N.Y. 11550
By: Gilbert Henoch, Esq.
Attorneys for Plaintiff

Milbank, Tweed, Hadley & McCloy, Esqs.
One Chase Manhattan Plaza
New York, N.Y. 10005
By: Andrew J. Connick, Esq.
Attorneys for The Chase Manhattan
Bank, National Association

Paul J. Curran, Esq.
United States Attorney for the
Southern District of New York
United States Courthouse Annex
One St. Andrew's Plaza
New York, N.Y. 10007
By: Nathaniel L. Gerber, Esq.
Assistant U.S. Attorney
Attorney for Comptroller

OPINION AND ORDER OF JUDGE L. F. MacMAHON
APPEALED FROM

MacMAHON, District Judge.

This action to set aside a decision of the Comptroller of the Currency, approving the application of The Chase Manhattan Bank ("Chase"), to establish a branch in Locust Valley, Nassau County, New York, is presently before us on cross-motions for summary judgment. Rule 56 Fed.R.Civ.P. Plaintiff, invoking the Administrative Procedure Act, 5 U.S.C. § 706, seeks review of the Comptroller's decision, contending that the approval was arbitrary, capricious, and an abuse of discretion. Summary judgment is appropriate since¹ the entire administrative record is before us.

Chase filed its application for permission to establish a branch in Locust Valley on August 6, 1974. Notice of the bank's application was published in The New York Times and Newsday, as well as the Weekly Bulletin of the Banking Department of the State of New York. Two commercial banks, Hempstead Bank and the Nassau Trust Company of Glen Cove, already had branches in the area, and both filed letters of protest with the office of the Regional Administrator of National Banks. The Nassau Trust Company requested a

OPINION AND ORDER OF JUDGE L. F. MacMAHON
APPEALED FROM

hearing on the application, but the request was denied as untimely. Plaintiff never requested a hearing.

The Regional Administrator of National Banks for the Second National Bank Region appointed a commissioned national bank examiner to investigate the Chase application. The examiner's study resulted in a report which included a population and economic profile of the community where the branch would be located and information as to the financial condition of Chase and of the two existing commercial banks in the Locust Valley area. The examiner talked to representatives of plaintiff and the Nassau Trust Company during his investigation, and their objections were included in his report.

The examiner recommended that the application be approved since the general affluence of the area and the benefit to the community gained by the addition of a competing bank facility outweighed the factor that future business and population growth appeared to be minimal. That recommendation was reviewed and concurred in by the Regional Administrator of National Banks, the Director of the Comptroller's Bank Organization Division, and the Deputy Comptroller. The Comptroller approved the branch application on October 8, 1974.

OPINION AND ORDER OF JUDGE L. F. MacMAHON
APPEALED FROM

Plaintiff first contends that since the Comptroller did not conduct a formal adversary hearing, his decision is invalid and the court must consider anew the branch application, making its own determination as to whether or not it should be granted. Plaintiff further contends that the facts presented clearly indicate that the application should be denied.

The scope of review open to this court, however, is quite limited. The law is clear that the Comptroller is not required to hold a hearing, to make formal findings, or to file an opinion. It is equally clear that this court should not try the issue de novo or substitute its judgment for that of the Comptroller. Decision by the administrative agency on an application to establish a branch bank must be sustained as long as there is a rational basis for the decision as established by the administrative record.²

The ninety-two page administrative record contains the results of the examiner's independent investigation of the financial health of both Chase and the commercial banks already established in Locust Valley,³ and an economic and population profile of the residential and

OPINION AND ORDER OF JUDGE L. F. MacMAHON
APPEALED FROM

business community, as well as an estimate of any probable change in those statistics.⁴ In addition, there are extensive economic and population data offered by Chase, in support of the application, and by plaintiff, Hempstead Bank, and Nassau Trust Company,⁵ in opposition. Defendant Chase estimated that the average family income was approximately \$20,000 per year;⁶ plaintiff estimated that the median income varied between \$13,386 and \$24,781.⁷ There are 2,882 housing units in the area, generally owner occupied and with an average value of \$41,000.⁸

We find, therefore, that there was an adequate factual basis in the record to support the Comptroller's decision that establishment of another competitive branch would benefit the community and that the affluence of the area indicated that the existing financial institutions would not suffer serious adverse effect.

Plaintiff next challenges the decision, contending that the Comptroller did not make the requisite findings under state law. Section 36(c) of the National Bank Act, 12 U.S.C. § 36(c), states that the Comptroller may approve a branch application only if the statute law of the state in question is satisfied. Section 29 of the

OPINION AND ORDER OF JUDGE L. F. MacMAHON
APPEALED FROM

New York Banking Law (McKinney 1971) requires that a branch will be approved "if [the superintendent] shall find upon investigation that the public convenience and advantage will be promoted. . . ." Plaintiff contends that the public convenience would not be promoted by the Chase branch, and, even if it were, the Comptroller did not make express findings or issue an opinion.

First, the language of Section 29 does not require written findings; it only directs that public convenience and advantage be considered before a branch application is approved. Further, it is clear that the Comptroller's conclusion that approval of the branch would stimulate competition in the area is a decision⁹ made in the public interest.

Plaintiff also contends that approval of the application violates Section 29.1 of the General Regulations of the New York State Banking Board. That section provides:

"Normally there should be a population of 5,000 persons per commercial bank facility within a reasonably defined service area. . . . In service areas of above average income

OPINION AND ORDER OF JUDGE L. F. MacMAHON
APPEALED FROM

or in service areas consisting primarily of working population, a reduction in the population requirement stated above shall be permitted. In residential service areas of lower than average income, a higher population shall be required."

The estimated population of the general service area --
10,150¹⁰ -- would be divided among three commercial banks if Chase's application were approved. The ratio of persons to banking facility would, therefore, be lower than the 5,000 to 1 suggested by the General Regulations of the banking board.

Regulation 29.1 does not, however, establish a mandatory ratio of one bank per 5,000 persons. It merely provides a guideline which may then be varied according to the economic health of the area. Although the approval of the Chase branch would result in a ratio less than that suggested by the regulation, it would still be permissible given the general affluence of the area.

Accordingly, there being no genuine issue as to any material fact, and the decision of the Comptroller being rational and in accordance with all

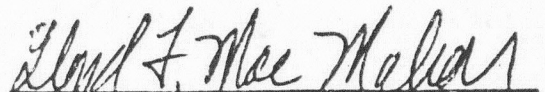
OPINION AND ORDER OF JUDGE L. F. MacMAHON
APPEALED FROM

applicable provisions of law, defendants' motions for summary judgment dismissing the action are granted in all respects. Plaintiff's cross-motion for summary judgment against the defendants is denied in all respects.

So ordered.

Dated: New York, N. Y.

February 4, 1976


LLOYD F. MacMAHON
United States District Judge

OPINION AND ORDER OF JUDGE L. F. MacMAHON
APPEALED FROM

Hempstead Bank v. Smith

75 Civ. 171-LFM

FOOTNOTES

1

Camp v. Pitts, 411 U.S. 138, 142 (1973); First Nat'l Bank of Fayetteville v. Smith, 508 F.2d 1371 (8th Cir. 1974), cert. denied, 421 U.S. 930 (1975); First Nat'l Bank of Fairbanks v. Camp, 465 F.2d 586 (D.C. Cir. 1972), cert. denied, 409 U.S. 1124 (1973); First Nat'l Bank of Crown Point v. Camp, 463 F.2d 595 (7th Cir. 1972).

2

Camp v. Pitts, supra; First Bank & Trust Co. v. Smith, 509 F.2d 663 (1st Cir. 1975); Village Bank v. Smith, 388 F. Supp. 1253 (W.D. Okla. 1975); Merchants & Planters Bank of Newport, Ark. v. Smith, 380 F. Supp. 354 (E.D. Ark. 1974).

3

Administrative Record, pp. 6, 9, 14 and 15.

4

Administrative Record, p. 10.

5

Administrative Record, pp. 21-92.

6

Administrative Record, p. 66.

7

Administrative Record, pp. 41 and 45.

8

Administrative Record, p. 10.

OPINION AND ORDER OF JUDGE L. F. MacMAHON
APPEALED FROM

9

United States v. Phillipsburg Nat'l Bank & Trust
Co., 399 U.S. 350, 358 (1970); Clermont Nat'l Bank
v. Citizensbank Nat'l Ass'n, 329 F. Supp. 1331 (S.D.
Ohio 1971).

10

Administrative Record, p. 6.

NOTICE OF APPEAL
UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

- - - - - X

HEMPSTEAD BANK,

Plaintiff,

-against-

File No. 75 CIV. 171-LFM

JAMES E. SMITH, Comptroller of the
Currency of the United States and
THE CHASE MANHATTAN BANK,
NATIONAL ASSOCIATION,
Defendants.

NOTICE OF APPEAL

- - - - - X

NOTICE is hereby given that HEMPSTEAD BANK, the
plaintiff above named, hereby appeals to the United States
Court of Appeals for the Second Circuit, from the order
granting defendants' motions for summary judgment and dismissing
plaintiff's cross-motion for summary judgment entered in this
action on the fifth (5th) day of February, 1976.

Dated: February 23rd, 1976

DALTON and HENOCH

BY: William J. Dalton

Attorneys for Hempstead Bank
50 Clinton Street
Hempstead, New York 11550
(516) 486-6600

STATE OF NEW YORK)
COUNTY OF NEW YORK) ss.:

ELIGIO GIBOY BAVX, being duly sworn,
deposes and says that deponent is not a party to the action,
is over 18 years of age and resides at 555 EAST 191ST ST
NEW YORK, N.Y.

That on the 9 day of APRIL, 1976,
deponent personally served the within APPENDIX

upon the attorneys designated below who represent the
indicated parties in this action and at the addresses below
stated which are those that have been designated by said
attorneys for that purpose.

By leaving 1 true copies of same with a duly
authorized person at their designated office.

By depositing true copies of same enclosed
in a postpaid properly addressed wrapper, in the post office
or official depository under the exclusive care and custody
of the United States post office department within the State
of New York.

Names of attorneys served, together with the names
of the clients represented and the attorneys' designated
addresses.

PAUL J. CURRAN
UNITED STATES ATTORNEY
ATTORNEY FOR DEFENDANT APPELLEE, SMITH
1 ST. ANDREWS PLAZA
NEW YORK, N.Y.
MILBANK TWEED HADLEY & McCLOY
ATTORNEYS FOR DEFENDANT APPELLEE
CHASE MANHATTAN
1 CHASE MANHATTAN PLAZA
NEW YORK, N.Y.

Sworn to before me this

9th day of April, 1976

Michael DeSantis

MICHAEL DeSANTIS
Notary Public, State of New York
No. 03-0930908
Qualified in Bronx County
Commission Expires March 30, 1977